Collection: Barr, William: Files
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1st draft

Tuition Tax Credit

FACT SHEET

On June 22, 1982, President Reagan submitted to the 97th Congress legislation to provide tuition tax credits to parents whose children attend private elementary and secondary schools.

The President's bill was favorably reported by the Senate Finance Committee on September 23, 1982, but no further action was taken in the 97th Congress.

The President has now submitted his tuition tax credit bill to the 98th Congress and has called upon Congress to give enactment of the bill "the highest priority."

BACKGROUND

All parents have a fundamental right and responsibility to direct the education of their children in a way that best serves their individual needs and aspirations. Private schools provide an essential means for many in fulfilling their aspirations.

The President's tuition tax credit legislation will provide tax relief to the working families of nonpublic school students, and expands the ability of American parents to exercise educational freedom of choice.

Educational opportunity and choice in a pluralistic society require a diverse range of schools -- public and private.

This choice raises issues of tax equity for those who carry the double burden of supporting both private and public school costs.

A tuition tax credit would assist these working families in meeting the increasing costs of nonpublic education. While still paying local taxes to support public schools, these families would be able to recover up to half the cost of each child's tuition.

- o Only parents who send their children to tax exempt, nonprofit, educational institutions at the elementary and secondary level could claim the credit.
- o In no case could parents who choose to send their children to schools which discriminate on the basis of race, color, or national origin claim the credit.
- o Nothing in the legislation would alter or interfere with the ability of the States to enact laws and regulations with respect to the operation of schools within the borders of the individual States; or with other rights and powers of the States.

- o Nothing in the legislation would create a basis for enabling the Federal Government to dictate policy to the schools. The credit would benefit individuals and would not make any funds available to the schools themselves.

MAJOR CONCEPTS

The major concepts of the Administration's proposal include:

Tax Equity

On the one hand, parents who choose to have their children educated at a nonpublic school must bear the constantly escalating tuitions which these schools must charge to survive. On the other hand, these same parents support public education through taxes which are paid by all citizens.

For many working parents, this dual financial burden is too great to permit them to exercise the right to send their children to the nonpublic school of their choice. Therefore, tax relief is necessary as a matter of equity if these families are to continue to exercise educational choice. A majority of all parents who had children enrolled in private elementary and secondary schools had incomes of less than $25,000. More than 80 percent of the parents of children enrolled in private schools earn less than $30,000 a year.

Limited Coverage

The credit would be restricted to parents of children in private, nonprofit, elementary or secondary schools. These parents bear the heaviest double burden of meeting educational responsibilities to their children in ways they deem most appropriate.

A Phase-In of the Credit

The nonrefundable credits would be phased in over a three-year period. Parents could claim:

A maximum of 50 percent of tuition paid for each child up to a maximum credit per child of:

$100 in 1983
$200 in 1984
$300 in 1985

Income Limitations

The credit would phase-out for families according to income level to insure that it would be used to meet the needs of working lower and middle income families. These families are suffering most from taxation and the need to meet their growing educational expenses. A full credit would be available only to those families with adjusted gross incomes up to $40,000 and would phase-out entirely at $60,000.

Eligible Institutions

Parents would be eligible for the tax credit only if they sent their children to private schools which are nonprofit and do not discriminate on the basis of race, color, or national origin.

Tuition Expenses

Tuition expenses would include required course fees and all other normal tuition fees, but would not include books, supplies, meals, or transportation costs.

STRONG ANTI-DISCRIMINATION PROTECTION

This Administration will not tolerate the use of tuition tax credits to foster racial discrimination. Consequently, the bill contains strong provisions to ensure that no credits will be permitted for amounts paid to schools that follow racially discriminatory policies. These provisions are identical to those that were adopted by the Senate Finance Committee last Fall with broad bipartisan support.

A school follows a racially discriminatory policy if it refuses, on account of race, either to admit student applicants or to allow students full participation in the school and its programs.

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

(1) IRS Code section 501(c)(3): A tax credit cannot be claimed unless the school is a tax exempt organization under section 501(c)(3). The bill does not become effective (and no credits can be taken) until by act of Congress or by decision of the Supreme Court it is determined that, under the Internal Revenue Code, 501(c)(3) tax exemptions cannot be granted to private educational institutions maintaining a racially discriminatory policy.

(2) Civil action by U.S. against school: If a person is discriminated against under a school's racially discriminatory policy, the Attorney General is authorized to file an action on behalf of the United States against the school.

(3) Perjury Prosecution: No credit can be taken unless the school files a statement every year attesting that it has not followed a racially discriminatory policy. The statement must be made under oath and is subject to the penalties for perjury.

MAJOR BENEFIT TO LOWER AND MIDDLE INCOME FAMILIES

According to a study by the Bureau of the Census in the Fall, 1979, more than 50 percent of children enrolled in private schools came from families with incomes below $25,000. Hence, the majority of benefits of the tuition tax credit would be paid to moderate and low income families. Moreover, since the proposal is a credit, the dollar benefit is the same to all, unlike a deduction which would provide a greater benefit for individuals in higher tax brackets.

RACIAL AND ETHNIC MINORITIES WILL BENEFIT

Contrary to popular misconceptions, minority enrollment in private schools is significant. According to that same Bureau of Census 1979 study, in all United States central cities in the standard metropolitan statistical areas 16 percent of all private school enrollees were Black, while Hispanic and other non-white students constituted 12 percent of the private school enrollment. In Washington, D.C., 80 percent of private school enrollees are Black. Thus Blacks and other minorities are currently well situated to take advantage of the tuition tax credits proposed in the Administration bill.

Tuition Tax Credit

final

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The President has now submitted to the 98th Congress a tuition tax credit bill that is substantially the same as the one reported by the Senate Finance Committee last year. He has called upon Congress to give enactment of the bill "the highest priority."

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DRAFT

Dear Judie:

I want to thank you for your interest in the enforcement of Federal laws that prohibit Federal grantees from discriminating against the handicapped, including handicapped newborns. As you know, I strongly believe that we must guarantee equal rights under the law, especially for the most helpless in our society.

Last April I issued a memorandum to the Attorney General and the Secretary of Health and Human Services on enforcement of Federal laws against such discrimination. The Department of Health and Human Services is continuing its efforts to enforce these laws, efforts that include preparation of proposed regulations -- not guidelines -- that it may be appropriate to issue in this area. More generally, we will work closely with the Department and the Attorney General to ensure fair and effective enforcement of anti-discrimination provisions.

I appreciate your interest in this matter, and want you to know that my Administration will continue its efforts to protect the rights of even the least of our brothers and sisters.

Sincerely,

/s/ Ronald Reagan

Mrs. Judie Brown
President
The American Life Lobby Inc.
6B Library Court, S.E.
Washington, D.C. 20003

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 16, 1983

FOR: EDWIN L. HARPER

FROM: ROBERT B. CARLESON
MICHAEL M. UHLMANN

SUBJECT: Proposed Letter to American Life Lobby

We agree with Fred that the reference to Tom Donnelly by name should be deleted, and the praise of A.L.L. toned down.

We have discussed this letter with Donnelly; he would like it to state positively that HHS is preparing regulations, that the Administration is expediting this matter, and that the new regulations will be an effective means to save the lives of handicapped infants. (Donnelly, Del Real, and Department of Justice are now moving to implement the anti-infanticide plan approved last week by Ed Meese, and we have it on a fast track in both departments.)

We recommend using Fred's draft, except delete the second sentence of the second paragraph and replace with:

"The Department of Health and Human Services is now preparing regulations to enforce these laws. The regulations are being expedited, and I am confident they will be effective in protecting the lives of handicapped infants."

A draft of Fred's letter with this revision is attached.

Dear Judie:

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I appreciate your interest in this matter, and want you to know that my Administration will continue its efforts to protect the rights of even the least of our brothers and sisters.

Sincerely,

/s/ Ronald Reagan

Mrs. Judie Brown
President
The American Life Lobby Inc.
6B Library Court, S.E.
Washington, D.C. 20003

DOCUMENT NO. 111929 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 2/16/83 ACTION/CONCURRENCE/COMMENT DUE BY: 2/16/83

SUBJECT: PROPOSED LETTER TO AMERICAN LIFE LOBBY

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

REMARKS:

BOB CARLESON/MIKE UHLMANN FOR ACTION

May I have your approval/changes on attached draft letter by COB today.

Judy Johnston

Please return this tracking sheet with your response

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

Document No. 111929SS (A)

WHITE HOUSE STAFFING MEMORANDUM

DATE: 2/16/83 ACTION/CONCURRENCE/COMMENT DUE BY: 2/16/83

SUBJECT: PROPOSED LETTER TO AMERICAN LIFE LOBBY

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	GERGEN	☐	☐
MEESE	☐	☐	HARPER	☑	☐
BAKER	☐	☐	JENKINS	☐	☐
DEAVER	☐	☐	MURPHY	☐	☐
STOCKMAN	☐	☐	ROLLINS	☐	☐
CLARK	☐	☐	WHITTLESEY	☐	☐
DARMAN	☐P	☐SS	WILLIAMSON	☐	☐
DUBERSTEIN	☐	☐	VON DAMM	☐	☐
FELDSTEIN	☐	☐	BRADY/SPEAKES	☐	☐
FIELDING	☐	☐	ROGERS	☐	☐
FULLER	☐	☐	______	☐	☐

Remarks:

The attached letter has been redrafted by Fred Fielding (see attached). For your clearance.

Richard G. Darman
Assistant to the President
(x2702)

Response:

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 14, 1983

FOR: RICHARD G. DARMAN
ASSISTANT TO THE PRESIDENT AND
DEPUTY TO THE CHIEF OF STAFF

FROM: FRED F. FIELDING
COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Presidential Letter to Mrs. Judie Brown, President of The American Life Lobby Inc.

I have reviewed the above-referenced letter, and defer to others on whether it is necessary to send such a letter to Mrs. Brown.

Should a decision be made to send the letter, however, I think some changes need to be made in the present draft. First, on checking with HHS, it is our understanding that it is not completely certain, at this stage, that regulations will be issued. Though it is probable that HHS and the appropriate officials at the Justice Department will conclude that new regulations are necessary, I do not think the President should personally commit to that course in a letter to Mrs. Brown.

In addition, I think the letter needs to be toned-down a bit in its praise of the efforts of Mrs. Brown and the American Life Lobby on the "infanticide" issue, since those efforts have included vociferous (and even somewhat personal) attacks on the Department of Health and Human Services and, in particular, General Counsel Juan del Real. It is one thing to express support for efforts to protect handicapped newborns; it is another to suggest that the President is personally "siding" with Mrs. Brown and "against" his own HHS appointee on how the Federal Government should proceed on this issue. If a letter is sent, it should indicate the former without suggesting the latter. Along the same lines, I do not understand why specific reference need be made to Acting Secretary Donnelly. If any implicit suggestion is intended that Donnelly is more "in tune" with the President on this issue than was former Secretary Schweiker, I think that is both inaccurate and inappropriate. I would eliminate any chance for such an interpretation.

Attached for your consideration is a suggested redraft that attempts to avoid the problems noted above.

Attachment

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 16, 1983

FOR: T. KENNETH CRIBB

FROM: WILLIAM P. BARR

SUBJECT: Background Material on the Alabama School Prayer Case

As you requested, I have attached the following:

(1) A five-page memo from Steve to Mike Uhlmann discussing Judge Hand's opinion. The first two pages are essentially a brief of the case.

(2) A copy of the opinion itself.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 22, 1983

FOR: LES DENEND

FROM: MICHAEL M. UHLMANN

SUBJECT: Initiative Status

Tab 7 - Antitrust

Antitrust materials for inclusion in trade package due from DOJ today or tomorrow. Once received, CCLP meeting will be scheduled to review, soonest.

Tab 8 - Working Women

DOL testifying today on behalf of Administration re pension reform. Harper has asked for CCLP meeting with President prior to March 7.

Tab 9 - Civil Rights (Fair Housing)

DOJ/HUD conferring this week on draft statute for fair housing. Issue will be ripe for CCLP meeting in March.

Tab 10 - Crime

Omnibus crime package coming over from DOJ today or tomorrow. CCLP meeting to be scheduled soonest.

Tab 11 - Reg Reform

Per Harper's instructions this morning, decision package to be presented to Presdient ca. April 1.

Tab 12 - Bankruptcy

President needs to raise attention level in Congress. Letter to that effect now being drafted by DOJ.

Tab 13 - School Prayer

Basic decisions made; Galebach prepping final package.

Tab 14 - Abortion

Galebach preparing strategy memo, will go forward to Harper this week.

Tab 15 - Immigration

CCLP meeting to be scheduled for March to review issues (with President).

THE WHITE HOUSE

WASHINGTON

February 17, 1983

MEMORANDUM FOR WENDELL GUNN
MIKE UHLMANN
DANNY BOGGS
BOB CARLESON
RALPH BLEDSOE

FROM: LES DENEND

SUBJECT: Initiatives Status

Hopefully, you will recall providing the substance for the attached in late January. Ed Harper has asked for an update. For each initiative included on your Cabinet Council agenda, please review and update the listed information. The key point is whether or not a meeting with the President is still needed.

INITIATIVES STATUS

January 28, 1983

Tab	No.	Initiative	Meeting with the President required
		CCCT	
Tab	1	Trade Strategy	No
	2	Research and Development	No
	3	Commerce Reorganization	No
	4	Small Business Package	No
		CCEA	
Tab	5	Productivity	No
	6	Structural Unemployment	No
		CCLP	
Tab	7	Antitrust Barriers	No, include in trade speech
	8	Working Women	No, except for pensions
	9	Civil Rights	Yes, for fair housing
	10	Crime	Yes, in February
	11	Regulation Reform	Yes, March - April
	12	Bankruptcy	No
	13	School Prayer	No
	14	Abortion	No
	15	Immigration	Not now
		CCNRE	
Tab	16	Energy Availability (Natural Gas Dereg.)	No, Hodel to meet with EMIII on strategy
	17	Department of Energy Reorganization	Not now, need time with EMIII for working group
	18	Environmental Policy Statement	Yes, working group reviewing; Cabinet Council in early Feb.
	19	Wetlands	Not now, Watt has under review
	20	Clean Air Act	Will know after Feb. 9 meeting
		CCHR	
Tab	21	Social Security	No
	22	Health Care Costs	No
	23	Federalism	No
	24	Education Initiatives	No
	25	Private Sector Initiatives	No
	1	Workfare	Not necessary, perhaps for a briefing in February
	2	Tuition Tax Credits	No
	3	Enterprise Zones	CCCT for later amendments in late February
		CCMA	
Tab	4	Regulatory Reform/Paper Work Reduction	Not necessary
	5	Fraud and Waste	Not necessary
	6	Private Sector Survey/Cost Control	Yes, receive report in February - March
	7	Budget Reform	No
	8	Procurement Reform	Not necessary
	9	Civil Service Retirement	Yes, in conjunction with Social Security reforms
	10	Property Asset Management	Not necessary

1st sent

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 24, 1983

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN
WILLIAM P. BARR WPB
STEPHEN H. GALEBACH

SUBJECT: Anti-Abortion Strategy

I. Introduction

To analyze the options for anti-abortion strategy, we have taken soundings among a wide range of pro-life staffers on Capitol Hill and leaders of pro-life groups. We now have a recommendation for a strategy.

II. Current Situation in Congress

There are three major bills in Congress that seek to solve the abortion problem by overturning Roe v. Wade:

- Hatch Amendment -- Constitutional Amendment giving States and Congress power to prohibit abortions.
- Helms Human Life Bill -- Seeks to overturn Roe by recognizing humanity of the unborn and declaring them persons under the Constitution.
- Hyde-Jepsen Respect Life Bill -- Primarily a ban on federal funding, but also encourages Supreme Court to overrule Roe, and addresses issue of infanticide.

If a vote were taken now, pro-life leaders agree, neither Hatch nor Helms could win. Hyde-Jepsen could win a majority in both houses, but cloture in Senate and discharge petition in House would be very difficult. Vote-counts on any or all measures would improve if we could get some pro-life victory that would give us momentum. Pro-life leaders believe that, ideally, momentum could be built by holding hearings on one or two small-scale pro-life initiatives that would spur grassroots activity and set the stage for a vote on a major anti-abortion measure.

The strategy of pro-abortion forces, on the other hand, is to force a major vote at the earliest possible time, on a measure they can defeat decisively, before pro-life forces have a chance to build momentum in the new Congress. Senator Baker's announced strategy plays into their hands. He says he will hold an early vote on Hatch and no other abortion votes this Congress. Senator Packwood says he can defeat Hatch and will not filibuster it.

The consensus among the major pro-life players on the Hill is that unless the President quietly helps to deflect Baker from his insistence on one, early, all-or-nothing vote on the Hatch Amendment, there will be no alternative but to go ahead with the vote. The attitude is one of resignation: If Senator Baker will allow a vote only on Hatch, they feel, better a defeat than no vote at all.

Senator Hatch wants the major anti-abortion vote in the 98th Congress to be on his Amendment. If that vote must be taken before more groundwork and momentum is built, in his view, so be it.

It is not in the interest of the President or the pro-life movement to acquiesce in Senator Baker's strategy of an early all-or-nothing vote. We recommend that the President exert behind-the-scenes leadership to have Senator Baker adopt a more flexible posture and to encourage key pro-life Senators to move ahead with selected small-scale initiatives that could produce favorable hearings and winning votes.

III. Options

1. Acquiesce in Senator Baker's strategy to bring the Hatch Amendment to an early vote, and do not insist on other Senate floor votes on abortion.

   ADVANTAGES:

   - Would place our opponents on record as favoring current system of abortion-on-demand when they vote against Hatch.

   DISADVANTAGES:

   - A guaranteed failure -- no one in the movement or in the Senate believes a two-thirds vote to be possible.
   - Defeat would demoralize pro-life supporters and cause them to look for scapegoats. Some will blame the President, however unfairly.

2. Press for vote on Hyde-Jepsen Respect Life Bill instead of or in addition to Hatch Amendment.

   ADVANTAGES:

   - Would have chance of passage with simple majority.

o Pro-life caucus in House will push hard on discharge petition.

DISADVANTAGES:

o Would probably not get 60 votes for cloture, <u>unless</u> pro-life movement builds greater momentum.

3. <u>Encourage key pro-life Senators to arrange hearings and votes on small-scale winnable pro-life initiatives as a way to build up momentum for eventual vote on Hatch or Hyde-Jepsen</u>.

(It would be made clear that these lesser items are not a replacement for a vote on the major initiatives, but rather a prelude to them, and that the President will continue to support Hatch as well as Hyde-Jepsen.)

ADVANTAGES:

o Issues such as fetal pain, infanticide, federal abortion funding, and fetal experimentation would place pro-abortion side on the defensive and build momentum.

o The President on January 21 expressed interest in simple, winnable initiatives, such as fetal pain.

o Senate Subcommittees on Constitution and Family are favorable forums for hearings.

DISADVANTAGES:

o This strategy is not possible under Senator Baker's current posture of vote on <u>Hatch only</u>.

IV. <u>Analysis</u>

<u>Option 1 is a prescription for disaster</u>.

o A vote on Hatch <u>only</u> will, by failing, cause division and recrimination among a potentially strong group of presidential supporters in 1984.

o Option 1 would play into the hands of liberal Democrats. They would like nothing better than to have an early vote against Hatch, with no other votes on abortion in this Congress. They want to focus the Catholic community on the economy and peace issues, <u>not abortion</u>, to avoid a repeat of the massive pro-Reagan shift in 1980.

Option 2 presents a greater chance of success than Option 1, but still is not very promising. Even proponents of Hyde-Jepsen do not hold out much hope for enacting it in its present form -- the best hope is to enact parts of the bill, such as the anti-federal funding provision and the anti-infanticide provision. Pushing the parts of Hyde-Jepsen that appear winnable would fit well into Option 3.

Option 3 appears the best chance for winning a victory, for enacting at least some increased protection for unborn children and for building the momentum that will generate more votes for Hatch and momentum for pro-life electoral victories in 1984.

The disadvantages and obstacles to Option 3 can be overcome by quiet, behind-the-scenes Presidential leadership:

- The President can make clear to Senator Baker the importance he places on allowing pro-life votes in addition to Hatch.

- The President can assure Senator Hatch that he wants to support his Amendment vigorously, but with several months delay in the vote to see if greater pro-life momentum can be built.

- Appropriate Senators or Representatives can be encouraged to introduce and hold hearings on smaller-scale measures and to push for votes on selected measures.

Some concrete possibilities are already apparent:

- Senator Denton and Congressman Erlenborn are already planning to focus on infanticide as part of the hearings in April on reauthorization of the Child Abuse Act. Bringing national attention to bear on occurrences of withholding food from handicapped infants can help tremendously to boost public concern for protecting the sanctity of human life.

- The President's reference in his Religious Broadcasters speech to pain suffered by unborn children during abortions sparked numerous media inquiries, but no media criticism, because the point is clear beyond dispute. Hearings would help bring the public to share the President's concern over this issue. A bill to prohibit the most cruel, prolonged, and painful form of abortions -- saline abortions -- might be the best way to make the issue concrete and immediate. Senator Hatch has promised hearings on fetal experimentation, and the issue of fetal pain is closely related.

- o We could push for House and Senate votes on the Dannemeyer Amendment, which passed the House last year by a vote of 260 to 140. This measure would prohibit federal funding for experimentation on live aborted babies.

A victory on just one or two of these issues would help enormously. There is very little down-side risk in having hearings on any or all of them. As hearings and committee votes take place, we could judge which issue(s) are best to bring to a floor vote.

Staffers of Senators Hatch, Denton, Jepsen, Nickles, and Helms would all welcome a victory on such initiatives. They all say the one essential pre-condition is to tell Senator Baker to allow abortion votes in addition to the Hatch Amendment. Republican leaders of the Pro-Life Caucus in the House believe such a Senate victory would help them as well. The Republican co-chairman of the Caucus, Congressman Chris Smith, says the best issue for hearings and a vote is fetal pain, especially in saline abortions.

Recommendation

Option 3:

- o Work closely and speedily with Senate pro-life staffers to develop and have introduced several small-scale initiatives, as outlined above.
- o Provide witnesses from Administration (e.g., NIH doctor to testify on pain experienced by unborn children).
- o Hold two Presidential meetings:
  - -- With Senator Baker, to tell him to be flexible in scheduling anti-abortion votes.
  - -- With Senator Hatch, to ask him to be flexible in timing of vote on his Amendment, while assuring him we do want it brought to a vote and will support him.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 24, 1983

FOR: EDWIN MEESE, III
EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: School Prayer Package

Our earlier circulation of this package brought comments from Fielding, Bakshian, and Duberstein. I have now revised the transmittal message to reflect that this is a resubmission of our amendment, and have also deleted the citations as overly legal for such a context. I have dropped both the Qs & As that Fred critiqued.

Ken Duberstein commented that we need to line up co-sponsors before we transmit a formal package to the Hill. We should do this as quickly as possible. I suggest we find at least one member in each House who is willing to push this package very hard.

The 34-page legal paper prepared by Justice Department was not transmitted to the Hill the first time, but was kept available at the press office to distribute. I suggest we follow the same course this time. The only change needed in the paper is the date on the cover.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

February 25, 1983

FOR: EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: OMB Circular A-122

I have reviewed OMB's proposed Circular A-122 and Horowitz's memorandum to Darman.

The basic idea of the circular, to ensure that government funds not go to support political advocacy, is sound. The specific approach proposed in A-122, disallowing federal reimbursement for the entire cost of any item used even minimally for political advocacy, is the most airtight means to accomplish the objective, but it raises a number of serious problems.

OMB is aware that substantial changes need to be made in the interest of efficiency and fairness. They are already considering changes to do the following:

- o Ensure that marketing activities of business toward government are not impeded.
- o Allow non-legislative contacts with state and local officials, e.g., zoning boards, police departments.
- o Loosen the harsh restrictions on casual, non-recurring, or de minimis contacts with government.
- o Widen the exceptions to allow provision of technical information to government.
- o Make it clear that communications to trade associations or political umbrella groups are not covered.
- o In the restrictions against grassroots lobbying, disallow the costs only for activity that encourages the public to take action to influence governmental decisions (thus drawing a more clear line between educational activity and political advocacy).

Additional modifications will doubtless be necessary, given the complexity of this matter. OMB is open to additional modifications, and their ongoing negotiations with interested groups appear the best way to come up with a reasonable, effective final rule.

<u>We should not retreat from the basic principle of A-122</u>. Government should not tax people in order to propagate other people's ideas. The President received vigorous applause when he said at the CPAC dinner last Friday that OMB will "press ahead" with A-122, and the proposal appeals not just on the basis of conservatism, but also an even more widely shared sense of fairness.

The basic problem that OMB is trying to attack is real and substantial. GAO has studied the misuse of government grant and contract funds for advocacy, but has not been able to take effective action against it under current rules. The amount of federal monies going to political advocacy is apparently in the billions.

The principle of this matter does extend to defense and other government contractors as well as nonprofit groups. To exempt defense contractors or profit-making businesses entirely would appear unprincipled and, in OMB's opinion, would make our position hopeless on Capitol Hill. Many of the changes that OMB is considering will make A-122 more restrained in its impact on contractors, but will not exempt them.

It will be important to follow the hearings of the House Government Operations Committee on this issue next Tuesday, to see how the proposal and any modifications under consideration are received. In addition, OMB has important meetings with the Comptroller General over the next few days; his support will be critical.

Press comment thus far has been mostly objective, with little criticism, apparently because it is very hard to attack the principle of what we are doing, and the arguments from self-interest groups do not merit great public attention.

<u>Recommendations</u>

- Encourage interested parties to air their objections with OMB and seek changes where justified.

- Do not give any signal that we might abandon the proposal entirely.

DOCUMENT NO. 114356 PD

OFFICE OF POLICY DEVELOPMENT

STAFFING MEMORANDUM

DATE: 2/14/83 ACTION/CONCURRENCE/COMMENT DUE BY: 2/19/83

SUBJECT: CIRCULAR A-122 - (Cost Principles for Non-Profit Organizations)

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

REMARKS:

Please comment on the attached.

Please return this tracking sheet with your response

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

Document No. ______________

WHITE HOUSE STAFFING MEMORANDUM

DATE: Feb. 12, 1983 ACTION/CONCURRENCE/COMMENT DUE BY: ---

SUBJECT: CIRCULAR A-122 (Cost Principles for Non-Profit Organizations)

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☐	☐	FULLER	☐	☑
MEESE	☐	☑	GERGEN	☐	☑
BAKER	☐	☑	HARPER	☐	☑
DEAVER	☐	☑	JENKINS	☐	☐
STOCKMAN	☐	☐	MURPHY	☐	☑
CLARK	☐	☑	ROLLINS	☐	☑
DARMAN	☐P	☑SS	WILLIAMSON	☐	☑
DOLE	☐	☑	VON DAMM	☐	☐
DUBERSTEIN	☐	☑	BRADY/SPEAKES	☐	☑
FELDSTEIN	☐	☐	ROGERS	☐	☐
FIELDING	☐	☑	______________	☐	☐

Remarks:

Richard G. Darman
Assistant to the President
(x2702)

Response:

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

MEMORANDUM

February 10, 1983

TO: Richard Darman

FROM: Michael J. Horowitz MH

RE: Circular A-122

On January 24, we published in the Federal Register proposed revisions to OMB Circular A-122 (Cost Principles For Non-Profit Organizations) that would generally make unallowable the cost of any item used in whole or in part for political advocacy. Defense, NASA and GSA simultaneously proposed identical revisions. The proposals would make a dramatic change in the political advocacy of contractors and grantees, because it would require them to segregate political activities from their grant or contract activities. Persons and equipment involved in or used for political advocacy would no longer be paid for with federal funds, in whole or in part, through grant or contract overhead allocations.

Nothing in our proposed revisions affects, or could affect, current activities of any company, contractor or grantee. The proposals are out for a 45-day comment period; even then a final rule cannot be expected until May at the earliest; it would not become effective for another month; and the rule, when final, will apply only to new contracts and grants. Any corporation counsel or executive who advises against participation in the current budget debate because of these proposals is attempting to pressure us about these proposals.

- Reaction from the parties directly affected has been, as expected, hostile. Non-profit groups are reportedly forming coalitions and determined to fight the proposals. Many non-profit political advocacy groups may be able to engage in such activities only because grant overhead monies finance their organizational activities.

- The reaction from federal contractors has been intense, though there has been favorable reaction in some corners of the business community. We have had two major meetings with business representatives, and believe we can accomodate many, though not all, of their concerns. Meetings are scheduled next week with the American Corporate Counsels Association and with the American Society of Association Executives. Other meetings are in process of being scheduled.

- The proposal has been greeted enthusiastically by conservative groups and their congressional allies. It is no exaggeration to say that they view this proposal one of the most important Administration initiatives.

- Press reaction has been muted, but on the whole favorable. Initial stories were fair, and were followed by a supportive editorial in the Wall Street Journal. Reportedly, favorable editorials are forthcoming in the Washington Post and The Christian Science Monitor.

- Reaction on the Hill has been mixed and cautious. We met with Senate Governmental Affairs Committee staffers yesterday, and encountered some support, considerable skepticism, but relatively little hostility. We will meet with the House side next week.

The across-the-board coverage of contractors as well as grantees has been the major factor in keeping this proposal afloat -- avoiding the charge that we are going after our "enemies." But it has also expanded the circle of opponents. We are trying to persuade key members of the business community to take a broader perspective. The debate may be won or lost on the business side. The business community has not yet decided whether to:

- inflate the changes against the proposal -- and use ambiguities to create scare tactics about its intent or effects; or

- work with us in seeking language changes that will offer fundamental protection in areas of legitimate concern.

Problems with the business community are more serious because the reactions have been generated by the Washington reps and trade associations, whose activities the proposal would require to be segregated and not financed with federal funds. I believe the imminent meetings with corporate counsels and on-going meetings with trade association representatives can mute the initial response. However, any signal that the Administration might abandon the proposals entirely would weaken the position of those who wish to work with us on practical changes. The proposal is complicated, and we have already identified areas that need correction. We have strongly invited suggestions to cure real problems, and have indicated that we will adopt many of them.

Per your request, I am also attaching a procedural time table and a brief description of the specifics of the proposal.

PROCEDURAL TIMETABLE

- January 24, 1983.

  OMB published Notice of Proposed Changes in Circular A-122. Defense, NASA, and GSA simultaneously proposed identical changes.

- 45-day Comment Period.

  The proposal went out for a 45-day period of public comment. We are considering requests for extending the period.

- Review and Revision.

  When the comments are in, we will review them, and make appropriate revisions to the Circular.

- Final Rule.

  A final rule could be promulgated no earlier than May.

- Effective Date.

  The effective date of the final rule will be 30 days after its promulgation.

- No Retroactive Effect.

  The proposal, when final, will affect only the terms of new contracts and grants. It will not affect any existing arrangements.

MAJOR FEATURES OF A-122 PROPOSAL

A-122 itself applies to non-profit grantees, but identical proposals by Defense, NASA and GSA are applicable to civilian and defense contractors (except for fixed price contracts).

The central premise is that grant or contract cost elements (e.g. personnel, facilities, equipment) used for political advocacy purposes cannot be paid for, on a direct or indirect/overhead basis, with federal monies. Persons and equipment involved in or used for political advocacy would no longer be paid for with federal funds, in whole or in part, through grant or contract overhead allocations.

The proposal bars federal payment of salaries, in whole or in part, if employees are required or induced to join advocacy organizations or to participate in political advocacy activities.

It bars grant or contract monies from being used to pay for memberships, subscriptions or political activity costs of political advocacy organizations.

The proposal will apply only to new grants and contracts. It does not apply to state or local governments or to block grants.

Monday
January 24, 1983

Part XXX

Office of Management and Budget

Cost Principles for Nonprofit Organizations

OFFICE OF MANAGEMENT AND BUDGET

[Circular A-122]

Cost Principles for Nonprofit Organizations

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This notice offers interested parties an opportunity to comment on a proposed revision to Circular A-122, "Cost Principles for Nonprofit Organizations." The proposed revision establishes special provisions for costs related to political advocacy. Similar revisions are being simultaneously proposed for civilian and defense contractors through appropriate actions by the Department of Defense, NASA and GSA, the three agencies with authority to issue procurement regulations. The purpose of these proposals is to ensure that federal tax dollars are not used, directly or indirectly, for the support of political advocacy.

Over the past 25 years, the volume of federal activity conducted through grantees and contractors has dramatically grown. Sound management of federal grants and contracts has correspondingly gained in importance. The responsibility of the President through OMB to improve the management of the executive branch of government with a view to efficient and economical service, and to fulfill other statutory and constitutional responsibilities, extends to issues of grant and contract management no less than to issues of direct federal activity.

In recent years, the problem of the use of federal funds for political advocacy by grantees and contractors has been identified by members of the public, by the Comptroller General, and by Members of Congress. As many of these parties have observed, the diversion to political advocacy of federal funds, and of equipment procured with and personnel compensated by federal funds, is an abuse of the system and an uneconomical, inefficient and inappropriate use of the public's resources. Moreover, the commingling of federal grant or contract activity with private political advocacy creates the appearance of federal support for particular positions in public debate. This appearance can create misunderstanding and interfere with the neutral, non-ideological administration of federally funded programs.

This proposal is designed to balance the First Amendment rights of federal grantees and contractors with the legitimate governmental interests of ensuring that the government does not subsidize, directly or indirectly, the political advocacy activities of private groups or institutions. These governmental interests are based on concern for protecting the free and robust interchange of ideas.

Americans have the First Amendment right both to engage freely in speech and political expression, and to refrain from speaking, without interference or control on the part of the government or its agents. *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). The proposed revision is intended to ensure that the use of Federal grants, contracts and other agreements by private organizations engaging in political advocacy does not erode or infringe these constitutional rights, or distort the political process by encouraging or discouraging certain forms of political activity.

The activities of government in a democracy necessarily involve a degree of political advocacy, since government officials are expected to communicate with the people, explain their programs, and provide leadership and direction to the nation. Thus, Members of Congress and their staffs, the President and his political appointees, necessarily participate in forms of political advocacy. However, it is a distortion of the market place of ideas for the government to use its financial power to "tip the electoral process," *Elrod v. Burns*, 427 U.S. 353, 356 (1976), by subsidizing the political advocacy activities of private organizations and corporations. This proposal will ensure, to the extent consistent with the communications function of the government, that taxpayers are not required, directly or indirectly, "to contribute to the support of an ideological cause [they] may oppose." *Abood v. Detroit Board of Education*, 431 U.S. 209, 235–236 (1977). The proposal also seeks to avoid the appearance that, by awarding Federal grants, contracts, or other agreements to organizations engaged in politicial advocacy on particular sides of public issues, the Government has endorsed, fostered, or "prescribe[d] [as] orthodox" a particular view on such issues, *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 645 (1943).

The proposed revision would make unallowable the cost of political advocacy, whether direct or indirect. The revision would also make unallowable any costs of communications equipment, personnel, other equipment, meetings or conferences, or publications, where such cost items are used for political advocacy in whole or in part. The revision makes unallowable the costs of buildings and office space where 5 percent or more of the space is devoted to political advocacy. When federal grant or contract recipients use facilities, equipment, or personnel funded in part with federal monies for political advocacy, they may create the appearance of government support for their positions. Moreover, if federal funds are used to defray the overhead costs of organizations engaged in political advocacy, it frees up the organization's other funds for use in this political activity.

The principal effect of the revision will be that federal grantees and contractors that choose to engage in political advocacy must separate their grant or contract activity from their political activity. If they mix the two, then they will not receive government reimbursement for the jointly allocable costs. Contractors or grantees will not be permitted to require or induce employees paid in part or in whole with federal funds to engage in political advocacy activities, either as a formal part of job responsibilites or on their own time.

The definition of political advocacy used in this proposal is derived generally from the Internal Revenue Code, 26 U.S.C. 4911, defining attempts to "influence legislation," with modifications designed to comprise direct participation in elections or referenda, administrative processes, certain judicial processes, and other activity of a political advocacy nature.

These proposed revisions will become effective 30 days after final notice in the **Federal Register.** The revisions will affect only grants, contracts, and other agreements entered into after the effective date. Existing grants, contracts, and other agreements will not be immediately affected. Agency contracts and regulations will incorporate these provisions to the same extent and in the same manner as they do other provisions of Circular A-122.

Violations of these provisions will be a basis for cost disallowance, and in instances of serious or willful violations, may be a basis for debarment or suspension.

Comments should be submitted in duplicate to the Financial Management Division, Office of Management and Budget, Washington, D.C. 20503. All comments should be received within 45 days of this notice.

FOR FURTHER INFORMATION CONTACT: John J. Lordan, Chief, Financial Management Branch, Office of

Management and Budget, Washington, D.C. 20503, (202) 395-6823.

Issued in Washington, D.C., January 20, 1983.

Candice C. Bryant,

Acting Deputy Associate Director for Administration.

Appendix

The following questions and answers have been prepared by the Office of Management and Budget for informational purposes only.

Question: What is the purpose of these revisions?

Answer: The purpose is to ensure that federal contracts and grants are not used to support political advocacy either directly or indirectly. Thousands of contractors and grantees, administering hundreds of billions of federal dollars, have had wide latitude to engage in political advocacy activities, often using the same facilities and personnel paid for in part by the taxpayers. The current lack of a government-wide policy prohibiting the use of federal grant and contract funds for political advocacy has been criticized by the General Accounting Office. It is unfair to use federal tax money to support political causes. Nor is it an efficient or economical use of public resources to allow funds to be diverted from statutory purposes to political advocacy.

A particularly important abuse is that many contractors and grantees have been able to defray the overhead costs of their political advocacy, at public expense, by allocating some part of the cost to the administration of the contract or grant. Not only does this free up the organization's own resources for further political activity; it also creates the appearance that the government is supporting one or another side in a political controversy.

Question: How will the proposals work?

Answer: The proposals will revise cost principles applicable to federal grants, contracts (other than competitive, firm fixed price contracts), and other agreements. Recipients of federal grants, contracts, or other agreements will be barred from receiving government reimbursement for any activities connected with political advocacy at the national, state, or local levels. This includes membership or dues in trade associations or other organizations that have political advocacy as a substantial organizational purpose. In addition, salary costs will be unallowable to recipients who either require their employees to pay dues to political advocacy organizations or require them to engage in political advocacy on the job or during non-working hours. Finally, government funds will not be permitted to pay for facilities in which significant political advocacy activities are conducted, thus requiring physical separation of such activities from those involved in the performance of grants and contracts.

Question: What is an example of how this will work?

Answer: Take the example of a defense contractor which uses a corporate aircraft for oversight and management of a federal contract. If the contractor chooses to use the aircraft also for lobbying or other political activities—such as transporting corporate officials to discussions with Congressmen—then under the principles proposed by the Defense Department, the contractor cannot include the cost of the aircraft or of any use of the aircraft as part of overhead costs allocated in part to the contract.

As an example in the non-profit area, take an organization which receives a federal grant to promote better health services for low-income individuals, which decides to organize a political rally to promote more federal funding for medical programs. The organization could not be reimbursed for any portion of the salaries of individuals engaged in organizing the political rally or for any portion of other overhead costs (office machines, printing facilities, etc.) if the same overhead items were used for the rally. The organization would be free to hold the rally—but it would do so at its own expense, and without using people, facilities or resources partially funded by the Federal Government.

Question: How is it possible to define "political advocacy"?

Answer: The concept of political advocacy, or "influencing legislation," is used in the Internal Revenue Code restrictions on tax-exempt organizations. The Internal Revenue Code definition of "influencing legislation" is employed in this proposal, with several modifications to take account of changes in political practices (e.g., development of political action committees), Supreme Court developments (e.g., decisions declaring certain forms of litigation to be political expression), and shifts in the decisionmaking process (e.g., the growth of administrative agencies and referenda as means of political decisionmaking).

In particular, the scope of the Code definition ("influencing legislation") has been expanded to cover "governmental decisions" in general. Thus, for example, the Internal Revenue Code defines the term "influencing legislation" as including "any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof." The proposed revision to Circular A-122, correspondingly, defines "political advocacy" as including "attempting to influence governmental decisions through an attempt to affect the opinions of the general public or any segment thereof." The body of experience in interpreting the Internal Revenue Code provision, as appropriately modified, is expected to aid in the interpretation of the proposed revisions.

The proposals thus include as "political advocacy" direct participation in elections or referenda by means of contributions, endorsement, publicity, administration of political action committees, or similar activity; contributions to political advocacy organizations; attempting to influence government policy made through the regulatory process as well as the legislative process; and attempts to influence government policy through litigation as an *amicus curiae*, on behalf of the members of the organization, or on behalf of another party. In addition, several categories of activity excluded from the Code definition of "influencing legislation" (e.g., communications with organization members on political topics and lobbying with respect to the organization's own interest) have been included in the proposal's definition, to ensure that such activities are not conducted at the expense of the public.

Question: What is the penalty for violating these provisions?

Answer: Cost recovery, and in instances of serious or willful violations, suspension or debarment from federal grants or contracts.

Question: How does this proposal affect the First Amendment right of freedom of speech?

Answer: This proposal will promote the First Amendment value that a person can freely speak, or refrain from speaking, on political matters. The Supreme Court has recognized constitutional problems with requirements on a person "to contribute to the support of an ideological cause he may oppose." *Abood* v. *Detroit Board of Education*, 431 U.S. 209, 235-236 (1977). Although government in a democracy necessarily involves some degree of political advocacy because of the need to communicate with citizens, taxpayers cannot rightly be required to support the political advocacy of private organizations and corporations through federal grants and contracts.

Moreover, the freedom of First Amendment political advocacy is jeopardized when the views of particular groups are financed by the government. The use of federal grants or contracts for the support of one side in a political debate, like the use of political patronage for the support of a political party, can injure the "free functioning of the electoral process." *Elrod* v. *Burns*, 427 U.S. 353, 356 (1976). In the marketplace of ideas, where differing political opinions compete for public acceptance, the government should not be in the position of subsidizing the expression of views of particular organizations or corporations, as to defense or domestic policy. Nor should the government create the appearance of official support for the political advocacy of its grantees or contractors.

Question: Does this proposal infringe the First Amendment rights of recipient organizations?

Answer: No. Recipients remain free to engage in political advocacy on any side of any issue. The proposals merely ensure that organizations engage in political advocacy at their own expense—not the public's. If an organization chooses to exercise its First Amendment rights, it is only fair that it keep those political activities separate from its work at the expense of the public. It should not expect to have its political advocacy subsidized, or to be able to put facilities purchased in part by tax dollars to political use. Like federal agencies and employees, federal grantees and contractors are "expected to . . . execute the programs of the Government without bias or favoritism for or against any political party or group or the members thereof." *CSC* v. *National Association of Letter Carriers*, 413 U.S. 548, 565 (1973). Federal grant and contract activity will be more efficiently and fairly performed if it is not mixed with advocacy activities on one or the other side of political debate.

Question: Will these proposals prevent corporations or other organizations from lobbying in Congress or the agencies for grants or contracts?

Answers: No—but they will do it at their own expense, not the public's.

Question: Will organizations engaged in political advocacy be eligible to receive federal grants and contracts?

Answer: Absolutely. In a memorandum dated April 26, 1982, the Director of OMB made clear that:

"The Administration will continue to award grants and contracts to those parties who are most effective in fulfilling statutory purposes [and that] political advocacy groups may continue to receive grant and contract awards."

This policy will continue in effect, and just as agencies will be forbidden to award grants and contracts because of the political views of applicant groups, they will also be forbidden from discriminating against "parties most effective in fulfilling statutory purposes."

Question: What will be the practical effect on organizations that engage in political advocacy?

Answer: Federal grantees and contractors that choose to engage in political advocacy will need to separate their grant or contract activity from their political activity. If they mix the two, then they will not receive government reimbursement for the joint costs.

Question: What will be the effect on the employees of contractors and grantees?

Answer: Employees whose salary is paid in part with federal funds may not be required or induced to engage in political advocacy, either as a part of the job or on their own time. Nor may they be required to join or pay dues to an organization involved in substantial political advocacy. This will ensure that federal funds are not used to hire political armies or to generate political membership support—practices analogous to these held unconstitutional in *Elrod* v. *Burns*, 427 U.S. 347 (1976). Of course, individual employees remain free to engage in political advocacy on their own it they wish to do so.

Question: To what organizations do the proposals apply?

Answer: The proposed revision to OMB Circular A-122 will apply to all non-profit organizations receiving federal grants, contracts, or other agreements. Similar proposals are being applied by the Department of Defense, NASA, and the General Services Administration to civilian and defense contractors. The proposed revisions will apply to grants, contracts, and other agreements entered into after the effective date of the revisions. Existing grants, contracts, and other agreements will not be affected.

Question: Will these proposals interfere with organizations due process rights to defend their interests in court?

Answer: No. So long as an organization appears in court on its own behalf, litigation is not defined as political advocacy. However, when an organization goes into court to represent others, or to support the claim of others, such attempts to influence policy through the judicial process are a form of political advocacy, as the Supreme Court has held. *NAACP* v. *Button*, 371 U.S. 415, 429 (1963); *In re Primus*, 436 U.S. 412, 428 (1978). Such activities should not be supported by federal grant or contract money, unless the grant or contract was made expressly for that purpose. Attorneys fee award statutes are not affected by these proposals.

Question: Will these proposals make it more difficult for the federal government to reward its political supporters?

Answer: Yes. Currently, the federal government may be able to reward its supporters, and punish its opponents, by granting or denying federal grants to organizations engaged in political advocacy. By making such awards to a friendly organization the government assumes a portion of that organization's overhead costs, and thus supports the organizations political activities. In this way, the govenment can influence the political process by inducing recipients of federal funds to conform their behavior to the governments desires. This was one of the dangers of the political spoils system recognized by the Supreme Court in *Elrod* v. *Burns*, 427 U.S. 347, 355–356 (1976). These proposals will help make the process neutral again, by eliminating the "political spoils" aspect of the government funding process.

Question: Will these proposals solve the whole problem of federal tax money being used to support political advocacy?

Answer: No, but they make a major step in the right direction. Congress and the agencies must continue to be vigilant to ensure that grants and contracts are not awarded for purposes that involve political advocacy.

Circular A-122—Cost Principles for Nonprofit Organizations

Circular A-122 is revised by modifying Attachment B as follows:

1. Insert a new paragraph "B 33 *Political Advocacy.*"

a. The cost of activities constituting political advocacy are unallowable.

b. Political advocacy is any activity that includes:

(1) Attempting to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through contributions, endorsements, publicity, or similar activity;

(2) Establishing, administering, contributing to, or paying the expenses of a political action committee, either directly or indirectly;

(3) Attempting to influence governmental decisions through an attempt to affect the opinions of the general public or any segment thereof;

(4) Attempting to influence governmental decisions through communications with any member or employee of a legislative body, or with any government official or employee who may participate in the decisionmaking process;

(5) Participating in or contributing to the expenses of litigation other than litigation in which the organization is a party with standing to sue or defend on its own behalf; or

(6) Contributing money, services, or any other thing of value, as dues or otherwise, to an organization that has political advocacy as a substantial organizational purpose, or that spends $100,000 or more per year on activities constituting political advocacy.

c. Political advocacy does not include the following activities:

(1) Making available the results of nonpartisan analysis, study, or research, the distribution of which is not primarily designed to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, or any governmental decision;

(2) Providing technical advice or assistance to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision;

(3) Participating in litigation on behalf of other persons, if the organization has received a Federal, State, or local grant, contract, or other agreement for the express purpose of doing so;

(4) Applying or making a bid in connection with a grant, contract, unsolicited proposal, or other agreement, or providing information in connection with such application at the request of the government agency awarding the grant, contract, or other agreement; or

(5) Engaging in activities specifically required by law.

d. An organization has political advocacy as a "substantial organizational purpose" if:

(1) The organization's solicitations for membership or contributions

acknowledge that the organization engages in activities constituting political advocacy; or

(2) Twenty percent (20%) or more of the organization's annual expenditures, other than those incurred in connection with Federal, State or local grants, contracts, or other agreements, or incurred in connection with political advocacy.

e. The term, "governmental decisions" includes:

(1) The introduction, passage amendment, defeat, signing, or veto of legislation, appropriations, resolutions, or constitutional amendments at the Federal, State, or local level;

(2) Any rulemakings, guidelines, policy statements or other administrative decisions of general applicability and future effect; or

(3) Any licensing, grant, ratemaking, formal adjudication or informal adjudication, other than actions or decisions related to the administration of the specific grant, contract, or agreement involved.

f. Notwithstanding the provisions of other cost principles in this circular:

(1) Salary costs of individuals are unallowable if:

(a) The work of such individuals includes activities constituting political advocacy, other than activities that are both ministerial and non-material; or

(b) The organization has required or induced such individuals to join or pay dues to an organization, other than a labor union, that has political advocacy as a substantial organizational purpose, or to engage in political advocacy during non-working hours.

(2) The following costs are unallowable:

(a) Building or office space in which more than 5% of the usable space occupied by the organization or an affiliated organization is devoted to activities constituting political advocacy;

(b) Items of equipment or other items used in part for political advocacy;

(c) Meetings and conferences devoted in any part to political advocacy;

(d) Publication and printing allocable in part to political advocacy; and

(e) Membership in an organization that has political advocacy as a substantial organizational purpose, or that spends $100,000 or more per year in connection with political advocacy.

2. Renumber subsequent paragraphs.

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