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**HEARINGS
Before The**

COMMITTEE ON FINANCE

UNITED STATES SENATE

S. 2673 - TUITION TAX CREDIT ACT OF 1982

THURSDAY, SEPTEMBER 16, 1982

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U.S. Senate

Committee on Finance

Washington, D.C.

The committee met, pursuant to recess, at 10:40 a.m., in room 2221, Dirksen Senate Office Building, Hon. Bob Dole [chairman of the committee] presiding.

Present: Senators Dole, Packwood, Roth, Danforth, Chafee, Durenberger, Symms, Grassley, Long, Byrd, Moynihan, Bradley, and Mitchell.

Staff present: Robert E. Lighthizer, chief counsel; Philip Morrison, professional staff member; Michael Stern, minority staff director.

Also present: David H. Brockway, Joint Committee on Taxation; John B. Chapeton, Assistant Secretary for Tax Policy; Brad Reynolds, Assistant Attorney General, Department of Justice; and Gary Jones, Under Secretary Designate, Department of Education.

1 The Chairman. Before we start discussing any
2 specific amendment I could ask, Phil, as I understand we
3 have three areas that are open for discussion.

4 Mr. Morrison. There are at least two that I am
5 aware of. There is the pending question on discrimination --

6 The Chairman. There is the Grassley amendment.

7 Mr. Morrison. -- there is the Grassley amendment
8 on \$40,000 to \$50,000, and there is the Danforth/Long
9 amendment on a vehicle to pay for tuition tax credits.

10 Senator Moynihan. I wonder if you could say that
11 once again. I am sorry, I did not hear you.

12 Mr. Morrison. Again, the three pending areas are
13 discrimination, the question on the high-income phase-out
14 offered by Senator Grassley, and the question on paying for
15 tuition tax credits offered by Senators Danforth and Long.

16 Senator Moynihan. Thank you.

17 Senator Chafee. Well, Mr. Chairman, I have a couple
18 of amendments I would like to submit at the appropriate time.

19 The Chairman. Fine. Do you want to do it now?

20 Senator Chafee. Before this packed audience? I
21 will do whatever you wish. If now is the time to serve them
22 up, I will --

23 The Chairman. Well, maybe we can discuss them
24 now. You do not have to offer them now but --

25 Senator Chafee. Well, I have two amendments, Mr.

1 Chairman. The first amendment provides that no monies shall
2 go to an educational institution during the calendar year
3 unless that institution has received accreditation by a
4 competent State educational authority. It seems to me that
5 is an innocuous amendment that is noncontroversial. We do
6 not want to be paying money to institutions that are not
7 approved, are not accredited, in other words.

8 The Chairman. Could I ask the administration to
9 respond to that?

10 Mr. Chapeton. Senator, I am not sure I understood
11 that.

12 Senator Chafee. No money will go to an institution
13 unless the institution has received accreditation by a
14 competent State educational authority, in other words, it
15 is an accredited school.

16 Mr. Chapeton. Senator, I would have to look at
17 that further. I am not sure of the impact of that.

18 Senator Chafee. Well, I do not think it is very
19 complicated.

20 Mr. Chapeton. I am not sure what schools would
21 be excluded. I would be concerned about that.

22 Mr. Chapeton. The second amendment deals with
23 discrimination, and as well as race, no discrimination based
24 on handicaps. I do not think we want to be spending any
25 money in any schools that will not accept the handicapped,

1 so that would be my second amendment.

2 Mr. Chapeton. I do not see any problem with that
3 but I would like to consider that.

4 The Chairman. I do not see any objection to that
5 amendment if it is not trying to kill the bill. I would
6 like to see the amendment.

7 Senator Chafee. Well, it is difficult for us to
8 see the amendment because we had it as an addition to the
9 Bradley amendment, which I understand now is -- is the Bradley
10 amendment in? Where are we?

11 The Chairman. Well, I hope to offer a substitute
12 for that amendment that would accomplish what Senator Bradley
13 wants to accomplish. He has had a chance to review it and
14 suggested modifications which have been agreed to, with I
15 think on exception. We are hopeful that with the adoption
16 of that amendment we will have the support of the principal
17 sponsors of this bill when it gets to the Senate floor, but
18 there would be a substitute.

19 Senator Chafee. Well, that presents my problem,
20 Mr. Chairman, in that I just added the words, where Senator
21 Bradley had "based on race" I just added "or handicap." Now
22 if we do not have the Bradley language --

23 The Chairman. Well, if we can agree to the concept
24 we can prepare the language at the appropriate place.

25 Senator Chafee. Yes, that would be agreeable with

1 me, Mr. Chairman. In other words, just follow the regular
2 definition of "handicapped" that appears in the Education
3 of All Handicapped Children Act.

4 Mr. Chapeton. Senator, what effect would that
5 have on schools that were not equipped to handle students
6 with certain handicaps?

7 Senator Chafee. They ought to get equipped to
8 handle it. Why should they be treated differently?

9 Senator Moynihan. Could I ask Senator Chafee this:
10 The Education of All Handicapped Children Act provides Federal
11 funds. Often these special children have special needs.
12 I assume that under this arrangement, that the nongovernment
13 schools would be eligible for funds in the same way that
14 the public schools are?

15 Senator Chafee. That would be perfectly agreeable.

16 Senator Moynihan. Yes, yes. Fine.

17 The Chairman. Is there anybody here from the
18 administration, so we can address this?

19 Mr. Jones. Mr. Chairman, private schools are
20 able to receive assistance through 94-142 now, either in
21 agreement with the local school or whatever the case. The
22 administration has considered this type of awarding before,
23 Senator Chafee, but we have preferred not to do that because
24 we do not see this really as aid to institutions. We see
25 this as a tax equity measure for parents, and if parents

1 wish to send their children to private schools and private
2 schools will provide access to the handicapped children to
3 those schools.

4 Senator Chafee. Well, without having any testimony,
5 I think we all recognize that the private schools are not
6 accepting the handicapped anywhere near in the proportion
7 of the handicapped in our society. Now it has been determined
8 as public policy that we want the handicapped to have access
9 to an education, to be "mainstreamed" as it were. It is
10 beneficial not only for the handicapped but it is also
11 beneficial for the students who attend the institution,
12 because they are in a milieu where there are handicapped.

13 If we are going to be helping with tuitions to
14 these institutions, it seems to me these institutions should
15 accept th handicapped just as the public institutions do.
16 You are not suggesting otherwise, are you?

17 Mr. Jones. I am not suggesting otherwise, but
18 we are not assuming at this point in time that the private
19 institutions are turning down students who are handicapped
20 that wish to attend private schools.

21 Senator Chafee. Well, let's make sure that they
22 do not, then, by putting in this legislation. It will not
23 be any harm to them on that basis.

24 Mr. Jones. Again, Senator, we do not believe that
25 we should look upon this as aid to institutions. We think

1 it is a measure to provide tax equity to parents

2 The Chairman. I do not understand. That is not
3 a requirement around here, but in other words, if the parents
4 had a handicapped child, they would be eligible for the tax
5 credit. Is that what you are suggesting?

6 Senator Chafee. That is right, but furthermore,
7 that the school could not discriminate on rejecting the child
8 because the child is handicapped.

9 The Chairman. Well, I do not have any quarrel
10 but I would not want duplicate benefits if in fact there
11 are already Federal funds applied where handicapped -- is
12 there discrimination in private schools based on handicaps?

13 Mr. Jones. We do not believe there is, Senator.

14 Senator Chafee. Well, I mean, that is ridiculous.
15 I have been to private schools. We have all been to private
16 schools and there are very few handicapped children in the
17 private schools, just looking around.

18 The Chairman. You want no discrimination as far
19 as handicapped are concerned. Is that correct?

20 Mr. Jones. That is correct.

21 The Chairman. Therefore, there is no problem with
22 that part. What is the other problem?

23 Mr. Jones. Well, the problem is that you are
24 beginning at the Federal level to mandate, perhaps,
25 admission standards for the private schools.

1 Senator Chafee. Well, we are doing it in the racial
2 We are stepping up and saying there is no racial
3 discrimination. We are getting into that, so we have crossed
4 that rubicon. There is no question there. Now we are just
5 saying that, furthermore, they shall not discriminate against
6 the admission of the handicapped.

7 Senator Moynihan. I am sorry, sir, I do not know
8 your name. You do not have a sign there.

9 Mr. Jones. Gary Jones, Under Secretary-designate.

10 Senator Moynihan. Mr. Secretary, the private,
11 nongovernment schools now receive aid under the Education
12 of All Handicapped Children Act, do they not?

13 Mr. Jones. They can.

14 Senator Moynihan. They can, but also they do.

15 Mr. Jones. Yes, sir.

16 Senator Moynihan. Could you give us some idea
17 what proportion of the funds for the act are directed to
18 private schools?

19 Mr. Jones. No, sir, I cannot at this time.

20 Senator Moynihan. Perhaps just for the interest
21 of the committee, you could have someone find it out and
22 let it be made a part of the record? It would be of interest
23 to us, I think.

24 Mr. Jones. Yes, sir.

25 Senator Moynihan. Thank you.

1 The Chairman. We would like to move on here, but
2 as I understand there is no problem that there should not
3 be discrimination on the basis of a handicap. I think what
4 some may be concerned about is that if it required some private
5 institution to build new facilities or enter into some
6 financial burden, if that is the thrust of the amendment
7 then I am not so certain about it, but if in fact it is a
8 policy that there shall be no discrimination because of race
9 or handicap, I do not think we have a problem with the
10 amendment. I do not have a problem with the amendment. Is
11 there anybody who can really speak for the administration?
12 It is a new amendment, so I do not know.

13 Mr. Chapeton. Well, I think that is precisely
14 the question we would have: Would it state that to be
15 eligible, for parents sending students to that school, that
16 the school would have to build facilities to handle children
17 of any type of handicap? I think that would change the thrust
18 of the tuition tax credit considerably. You would require
19 schools to spend a great deal of money to take any type of
20 handicap. Is that --

21 Senator Chafee. I have not said that in the
22 amendment. I just said that they cannot discriminate on
23 the admission of a child because of a handicap. If the
24 child is in a wheelchair or the child has deaf problems or
25 something like that, they cannot discriminate against

1 admitting that child.

2 Now what they do about barriers once they are there,
3 the child is there, well, that is not covered by this
4 amendment.

5 The Chairman. Your thrust is that there be no
6 basis for discrimination because of a handicap.

7 Senator Chafee. Right.

8 The Chairman. There is nothing wrong with that,
9 is there?

10 Mr. Chapeton. No. I think that the only question
11 is whether it would, in effect, dramatically limit the number
12 of schools that qualify, and I think we would need to
13 understand more clearly the thrust of the amendment on that
14 score. I guess, Senator Chafee, you are saying that there
15 is no requirement in the amendment that elaborate facilities
16 be built to handle any type of handicap?

17 The Chairman. We could make that clear in the
18 report language. As I understand, Senator Chafee is saying
19 that if you have a child who is handicapped attending a private
20 school, the tax credit ought to be available and there should
21 not be -- he should not be denied participation because of
22 a handicap.

23 Senator Mitchell. Mr. Chairman?

24 The Chairman. Yes?

25 Senator Mitchell. I just want to add my support

1 to Senator Chafee's amendment. I think there is, in fact,
2 no group in our society which has suffered more
3 discrimination in various forms than the handicapped. For
4 many years in our country there was a problem that was not
5 confronted by society, to the detriment of those who suffered
6 handicaps. Now we are beginning to move in the right
7 direction, and I think it is important if we are about to
8 embark on a new area of public policy, of providing support
9 in areas where support was not previously rendered, that
10 it ought to be on the basis of absolutely no discrimination
11 of any kind and certainly not against those who are handicapped
12 or disabled. Therefore, I strongly support Senator Chafee's
13 amendment and commend him for it.

14 The Chairman. Mr. Reynolds?

15 Mr. Reynolds. Mr. Chairman, I would like just to
16 make sure, if I could have a clarification, Congress has
17 passed the Education for All Handicapped Act, and obviously
18 section 504 addresses the whole question of antidiscrimination
19 in the handicapped community. If we are talking about an
20 antidiscrimination concept here, as the chairman suggested,
21 that I think is not problematic. However, I think that if
22 we are talking about a provision that is going to impose
23 on private schools an obligation to make any additional
24 expenditure of funds, whether it be to build facilities or
25 to provide interpreters or what have you, that is a concept

1 which goes beyond the antidiscrimination provisions in (d) (1)
2 that the Supreme Court spoke to as recently as last term.
3 I think we ought to be very precise in terms of what it is
4 that you have in mind with regard to the antidiscrimination
5 provisions so that we do not overlap into areas where
6 Congress has seen fit to make special legislation to address
7 these problems.

8 Senator Chafee. Well, I do not know how more
9 specific we can be. We have a definition of handicapped
10 under the Education of All Handicapped Children Act. We
11 are just saying that these schools cannot discriminate against
12 the handicapped.

13 The Chairman. Okay. Well, I think on that basis,
14 if we will make it that specific and we will clarify it in
15 the report, then let's take the amendment. Let's get out
16 of here.

17 What is next?

18 Senator Byrd. Well, wait a minute. If Congress
19 is taking over the control of the private schools, I want
20 to suggest an amendment that they not be permitted to
21 discriminate in regard to sex.

22 Senator Chafee. I will support that. I think
23 that makes sense.

24 The Chairman. Well, it does to those who do not
25 want the bill.

1 Senator Byrd. Well, I do not know why you want
2 to discriminate on the basis of sex. I thought that was
3 the general policy of our country.

4 The Chairman. Well, we will be happy to consider
5 the amendment.

6 Senator Byrd. I move the adoption of the amendment
7 and ask for the yeas and nays.

8 The Chairman. The clerk will call the roll.

9 Senator Packwood. Is this on John's amendment
10 or is this on Harry's amendment?

11 The Chairman. This is on Senator Byrd's amendment.

12 Senator Bradley. What is the amendment? I do
13 not understand the amendment. I understand the principle
14 that Senator Byrd has espoused but what does this apply to?
15 Individual school systems or what? What does it mean?

16 Senator Byrd. It applies the same provision that
17 your amendment applies to, the same way as your amendment
18 applies, the same way as Senator Chafee's amendment applies.
19 There is no difference.

20 The Chairman. However, it does not suggest you
21 cannot have boys' schools or girls' schools.

22 Senator Byrd. It says that you cannot discriminate
23 on the basis of sex.

24 The Chairman. However, that does not answer my
25 question.

1 [Laughter.]

2 Mr. Reynolds. I believe it would indeed say that
3 you could not have all-girls schools or all-boys schools
4 at the primary or secondary level.

5 The Chairman. I do not have any quarrel with the
6 amendment if we are suggesting that where you have
7 coeducation, that there should be no discrimination based
8 on sex, but I do not --

9 Mr. Reynolds. As I understand the amendment, it
10 would preclude private schools that are now in existence,
11 and there are a large number of them, that are all-girls
12 schools or all-boys schools.

13 Mr. Jones. That is correct, Mr. Chairman, and
14 I think --

15 Mr. Reynolds. Is that the intent, Senator?

16 Senator Packwood. Does it mean that a Catholic
17 parish cannot run a girls' school and a boys' school?

18 Mr. Reynolds. That is what it would mean. That
19 is correct. It would mean you could not do that.

20 Senator Chafee. Well, let me just say that it
21 seems to me that this is a worthy amendment, because you
22 may well have a situation where you would have an all-boys
23 school, a private school, with no accessibility for girls.
24 Why should the girls be prohibited from having all the
25 privileges and the benefits of the private education system

1 which we are so concerned with here?

2 Mr. Jones. Well, you only have that, Senator,
3 if you are in a community where you only have an all-boys
4 private school but not an all-girls private school.

5 Senator Chafee. I know it.

6 Mr. Jones. Otherwise you do not have that
7 discrimination basis.

8 Senator Chafee. Yes, but suppose you do have that
9 situation. What does the girl do? Tough luck?

10 Mr. Jones. No, but there are institutions --

11 The Chairman. I want the record to show that Senator
12 Chafee is a strong supporter of tuition tax credits, so we
13 have it right out there in the open.

14 [Laughter.]

15 Senator Chafee. Well, if we are going to do it,
16 Mr. Chairman, I think at least we want to have it fair.

17 The Chairman. Well, I do not know whether you
18 want it fair or want it killed, and I think that --

19 Senator Chafee. Well, that is an assumption you
20 are making. I have said right along, I am not going to support
21 the bill but I am going to do the best I can, under this
22 juggernaut that is assembled behind the bill, to at least
23 see that it is fair, to the best of my ability.

24 Senator Packwood. Does this amendment also mean
25 that if a school is coeducational, and in essence is

1 following an affirmative action program -- if it has been
2 a boys' school, to recruit girls -- that that is out also?
3 They would not be able to do that?

4 Mr. Reynolds. I am sorry, I did not --

5 Senator Packwood. Well, if they are
6 disproportionately favoring women in order to an attempt
7 to bring up their quota to 50-50 -- I am not offended by
8 boys' and girls' primary schools, but I want to understand
9 what the amendment is, how it works.

10 Mr. Reynolds. Well, the legislation as it is now
11 drafted suggests that it is not discrimination if you are
12 engaged in a program where you are trying to recruit more --

13 Senator Packwood. Trying to what?

14 Mr. Reynolds. Trying to recruit other race students.
15 I think that the amendment that the Senator is proposing
16 would raise some very serious problems as to whether or not
17 that would be construed by the courts as discrimination.

18 Senator Byrd. Therefore, under your proposal a
19 school does not need to admit both male and female?

20 Mr. Reynolds. Well, I think, Senator, I would
21 say that if a school is coeducational that it should admit
22 both male and female students without discrimination, but
23 I also think that there is a very, very traditional aspect
24 of our educational system in this country that does indeed
25 permit all-boy and all-girl schools within school systems,

1 and those have not been deemed to be discriminatory
2 educational institutions.

3 I believe that the amendment that you are proposing
4 would not longer permit the parochial schools of this country
5 to operate in that fashion. As I understand your amendment,
6 that would be discriminatory. My sense is that certainly
7 as the law has developed thus far, that is not considered
8 to be discrimination unless Congress were to declare for
9 purposes of this legislation that it was going to consider
10 that to be discrimination.

11 Senator Byrd. Of course, we are adopting a new
12 principle in this bill.

13 Mr. Reynolds. I believe that would be --

14 Senator Byrd. I mean, this bill itself is something
15 that has never been done before. It is an entirely new
16 concept.

17 Mr. Reynolds. I think it certainly would be an
18 expansion of the existing concepts.

19 Senator Byrd. If the Congress is going to take
20 charge of the private schools, then it seems to me you might
21 want to consider what seems to me to be the basic policy
22 of our country, not to discriminate.

23 Mr. Jones. Senator --

24 Mr. Reynolds. I have a question whether that policy
25 has gotten us to the point of saying that there no longer

1 is anyplace in our country for all-boy or all-girl schools
2 at the primary or secondary school level.

3 Senator Byrd. Hasn't your department advocated
4 that there be mixed football, baseball teams, softball teams,
5 and so forth?

6 Mr. Reynolds. In coeducational schools the athletic
7 programs are required to be nondiscriminatory on the basis
8 of sex, certainly for all those schools where the athletic
9 program is receiving Federal funds.

10 Senator Byrd. Now you approve of that, the Justice
11 Department approves of that?

12 Mr. Reynolds. Where the athletic program receives
13 Federal funding, that is correct.

14 Senator Byrd. Therefore, in other words, you and
15 your Justice Department, the present Justice Department,
16 do not favor permitting a school to have an all-boys
17 basketball team or an all-girls basketball team? In your
18 judgment they must have a mixed team.

19 Mr. Reynolds. No, I think they can have an all-
20 girls basketball team and an all-boys basketball team, but
21 I think that if there are Federal funds going to those programs,
22 that they have to be distributed evenly between the two teams.

23 Senator Byrd. Well, do they not also have to --
24 is it not also discrimination not to have a mix in the teams?

25 Mr. Reynolds. I believe in the circumstances I

1 described, if they were to deny to an individual of the --
2 let's say a female student the opportunity to participate
3 on a male team, that that would raise a question.

4 Senator Byrd. Therefore, under your logic you
5 would not permit a school to deny the right of a female student
6 to participate on a male team?

7 Mr. Reynolds. In those circumstances where the
8 school's athletic department was receiving Federal funds.

9 Senator Byrd. That is the current policy of the
10 Department of Justice?

11 Mr. Reynolds. For coeducational schools.

12 Senator Byrd. Well, that is a very interesting
13 policy.

14 Mr. Jones. Senator Byrd, there is an additional
15 problem, I believe, in this question of sex, and that is
16 the question of religious freedom of many institutions. There
17 are many institutions who believe in one-sex schools, and
18 if you would put this form of an amendment into this law,
19 you would be dictating to several types of institutions that
20 they could no longer -- that the parents of their children
21 would not be eligisle for the tuition tax credits because
22 their religious belief says they should send their son to
23 an all-male school.

24 I wish to underscore that we do not deem -- many
25 of these amendments are beginning to address this in concept

1 as aid to institutions -- we do not deem this as an aid to
2 an institution. This is tax equity for parents who wish
3 to send their children to private school.

4 Senator Moynihan. Would the Senator yield, just
5 to see if I get it clear?

6 Senator Byrd. Certainly.

7 Senator Moynihan. Now there are, I do not doubt,
8 religious denominations that thing there is a religious ground
9 for separating the sexes at an early age of education. I
10 do not know of one but I am sure there are some. The practice
11 of the parochial schools is not derived from religious
12 doctrine but simply from pedagogical preference, nothing
13 more or less. They think that is a better way to educate
14 6-year-olds, and there are boys' schools and there are girls'
15 schools.

16 Now under Senator Byrd's amendment, would a local
17 denominational school be precluded from having an all-boys
18 high school and an all-girls high school?

19 Mr. Reynolds. As I understand the amendment, I
20 think that that would be correct. They would be precluded
21 from denying admission -- if it was an all-girls school,
22 they would be precluded from denying admission to a male
23 student, and vice versa.

24 Senator Moynihan. Thank you.

25 The Chairman. All right, do you want the yeas

1 and nays on the amendment?

2 All in favor of the amendment, say aye.....

3 [A chorus of ayes.]

4 The Chairman. All opposed, no.

5 [A chorus of noes.]

6 The Chairman. I think we better have a record
7 vote. I would say the noes prevailed but it was pretty close.

8 It is a pretty close call.

9 The Clerk. Mr. Packwood?

10 Senator Packwood. No.

11 The Clerk. Mr. Roth?

12 The Chairman. No.

13 The Clerk. Mr. Danforth?

14 [No response.]

15 The Clerk. Mr. Chafee?

16 Senator Chafee. Aye.

17 The Clerk. Mr. Heinz?

18 [No response.]

19 The Clerk. Mr. Wallop?

20 [No response.]

21 The Clerk. Mr. Durenberger?

22 [No response.]

23 The Clerk. Mr. Armstrong?

24 [No response.]

25 The Clerk. Mr. Symms?

1 [No response.]

2 The Clerk. Mr. Grassley?

3 [No response.]

4 The Clerk. Mr. Long?

5 [No response.]

6 The Clerk. Mr. Byrd?

7 Senator Byrd. Aye.

8 The Clerk. Mr. Bentsen?

9 [No response.]

10 The Clerk. Mr. Matsunaga?

11 [No response.]

12 The Clerk. Mr. Moynihan?

13 Senator Moynihan. No.

14 The Clerk. Mr. Baucus?

15 [No response.]

16 The Clerk. Mr. Boren?

17 [No response.]

18 The Clerk. Mr. Bradley?

19 Senator Bradley. No.

20 The Clerk. Mr. Mitchell?

21 [No response.]

22 The Clerk. Mr. Chairman?

23 The Chairman. No..

24 Senator Long. Long, no.

25 The Chairman. The vote so far is 5 to 2. There

1 are a number of absentees will be permitted to be recorded.

2 Now as I understand the Chafee amendment, again,
3 if it is strictly that there should be no discrimination,
4 that a handicap should not be the basis of discrimination,
5 as I understand there is no problem with that as long as
6 it is not directly -- that there are some private schools
7 who may deny admission to somebody who is severely handicapped
8 because they do not have the facilities. I do not believe
9 the thrust of Senator Chafee's amendment would require those
10 schools to spend large amounts of money to make the facilities
11 comply with what someone might suggest the amendment means.

12 I do not know whether Senator Chafee --

13 Senator Chafee. Yes, that is correct. If the
14 student is blind and can get around the school, and has some
15 facility to -- somebody reads to him or whatever it might
16 be -- that student cannot be denied just because he has a
17 handicap.

18 Senator Long. Well, Mr. Chairman --

19 Senator Chafee. I thought we voted on this, Mr.
20 Chairman. I thought we accepted this, didn't we?

21 The Chairman. I am just trying to clarify it so
22 we can put language in the report because I think that if
23 in fact we understand there are some private schools that
24 would be severely strained financially if they had to change
25 their structures or build new structures, and if the school

1 does not have facilities that would accommodate somebody
2 with a severe handicap, then I think there might be a basis
3 not because of the handicap but because of the economic
4 conditions, where they should not be penalized.

5 Now if you go back to the definition of "handicapped"
6 referred to in the amendment, "handicapped children" means
7 "mentally retarded, hard-of-hearing, deaf, speech-impaired,
8 visually handicapped," and it goes on and on. Therefore,
9 I think there are some rather serious handicaps, not that
10 we discriminate on that basis, but there are some real reasons
11 why they might not be able to admit those students.

12 Mr. Jones. Mr. Chairman, I appreciate those
13 comments because the problem is liable to become pretty
14 severe if there is not some form of clarifying language in
15 all of this business with the handicapped, particularly in
16 the sense of the cost, because the cost is more than just
17 in the facilities. The cost to educate a handicapped child,
18 on the average nationwide, is twice that of the nonhandicapped
19 child.

20 The Chairman. Well, we will make that clear in
21 the report if that is all right with the Senator from Rhode
22 Island.

23 Senator Chafee. Well, I would certainly like to
24 have a look at the report language.

25 The Chairman. All right.

1 Senator Long. Mr. Chairman, may I just make this
2 point about the handicapped? There are special schools --
3 I know from watching it on television, but I have seen some
4 of the schools -- there are special schools for people who
5 have very severe handicaps, people who cannot hear, people
6 who are blind, and that requies that you have special courses,
7 that you teach them in special ways, that you have special
8 facilities, special teachers, none of which would be
9 applicable to the ordinary school, which the public schools
10 do not provide in the ordinary public school, even though
11 they may have certain public schools that take care of the
12 deaf or the blind.

13 However, the amendment would or could be construed
14 to mean that just an ordinary school -- and if you are going
15 to do it for these private schools, I guess you would want
16 to do it for the public schools as well -- that any ordinary
17 public school would have to have a teacher in the classroom
18 to teach the blind and the deaf along with those who are
19 not blind and deaf. It is totally impractical, and I believe
20 we ought to keep in mind that this is a bill to aid the
21 children to get an education. As I understand, the tax credit
22 goes to the families for the benefit of the child, and not
23 to the schools.

24 The Chairman. Well, then, as I understand the
25 record does not indicate a disposition of the amendment,

1 I would think that we could either accept it on that basis
2 or -- and I think I understand what Senator Chafee want to
3 make certain, that it is not used as a basis for discrimination.
4 On the other hand, if it presents a problem, there are
5 probably going to be some severely handicapped who are not
6 going to be admitted to the school.

7 Mr. Stern. Mr. Chairman, are you suggesting that
8 the question of discrimination relates only to admission,
9 not on whether the school makes special accommodation for
10 the handicapped?

11 The Chairman. Right.

12 Mr. Stern. It is only a question of whether a
13 child is admitted to the school or not, now how he is treated
14 once he is there.

15 The Chairman. Is there any objection on that basis?

16 Mr. Reynolds. That would contemplate that in the
17 admission decision, if there is a need for any kind of special
18 accommodation, the refusal to admit would be nondiscriminatory.

19 The Chairman. That is right. That is the way
20 I understand it.

21 Mr. Jones. Mr. Chairman?

22 The Chairman. Yes?

23 Mr. Jones. Also, would it be possible to
24 consider providing the flexibility at the private school
25 for them to charge additional money for the handicapped

1 student, so that there would be a more equitable burden placed
2 upon the private school?

3 Senator Moynihan. I do not understand what he
4 just said. Would you please restate that?

5 Senator Chafee. Would you place a special charge
6 on the handicapped child?

7 Mr. Jones. No, but you are placing an extra-heavy
8 burden on the private school that has to pay -- on a
9 national average, in the public school sector -- at least
10 twice as much money to educate the handicapped student as
11 a nonhandicapped student. While you are still providing
12 the tax credit to parents, as opposed to the institution,
13 you are still asking the institution to bear twice the cost.

14 Mr. Bradley. Mr. Chairman, is that the intent
15 of the Senator? If it is, I think we ought to make it clear
16 that this is the provision that applies to handicap, and
17 it is separate from the provision that applied on racial
18 discrimination.

19 The Chairman. That is right, but I think we want
20 to make very clear -- because this is an amendment that no
21 one has seen, and it talks about a definition of the handicapped
22 the same that is in P.L. 142, and again, that includes some
23 very severely handicapped children -- we are not going to
24 do by indirection what we are not prepared to do by direction,
25 and that is to require private schools to expend large sums

1 of money that would not be required of public schools in
2 the same instance. Therefore, if there is some disagreement,
3 if it applies to admission only as Mr. Stern correctly pointed
4 out, that is satisfactory. However, if we are going to embrace
5 the whole definition in P.L. 142, then we have opened up
6 a whole new area that I do not think we can address in this
7 bill.

8 We are talking about -- as Senator Long and others
9 pointed out -- we are talking about tax credits to the family,
10 not to institutions.

11 Senator Long. Well, Mr. Chairman, I just want
12 to make this clear, and I think that however we do it, we
13 ought to make this clear: If you take a child that is stone
14 deaf down to the average public school and you want that
15 child admitted, it would be irresponsible for them to admit
16 that child because that child cannot do the classwork that
17 is expected, and they do not have the teachers in that
18 classroom to teach a deaf child. Therefore, they are not
19 accepting the child for a simple reasonk that the child cannot
20 do the kind of work that they expect the children to do in
21 that school.

22 Now we do provide schools for deaf youngsters in
23 this country. I guess every State does it, but I do not
24 see why a private school should be discriminated against
25 in that respect. Public schools, for the good of the child,

1 would not admit the child, and I do not think a private school
2 should be required to admit them either when the practical
3 matter is that they would not be doing the child any favors.
4 That child should be in a school where they can teach that
5 kind of a child.

6 Senator Chafee. Well, if you are concerned about
7 that you can put that in the language. Obviously I am not
8 trying to impose any heavier burden on the private schools
9 than I am the public schools, but what we have here, Mr.
10 Chairman, is a situation where we are embarking on a piece
11 of legislation that is going to fund children going to private
12 schools. Now obviously this is going to result in a skimming
13 process, that the best children, the families who are eager
14 for the better education, those children who are not beset
15 with either educational problems or handicap problems or
16 linguistic problems, are not going to be left in the public
17 schools. That is what I am trying to prevent happening here.

18 Frankly, I think we ought to say that the private
19 schools ought to take those with the same linguistic
20 situation that those in public schools take. Therefore,
21 we have said already, Senator Long has stressed that this
22 is aid to the child, not to the school, but we have already
23 said that none of this will be permitted for a youngster
24 who goes to a school that racially discriminates. Now I
25 think we ought to move to the next thing, which is the

1 handicapped child. Why should a handicapped child be barred
2 from going to a private school which the U.S. Government
3 is paying for, part of it?

4 The Chairman. I think I do not quarrel with that,
5 I think as long as the record is clear that if in fact the
6 institution does not have the facilities to educate the
7 handicapped student -- as Senator Long indicated in one
8 example -- in these cases admission could be denied without
9 violation of the act.

10 Mr. Jones. Mr. Chairman?

11 The Chairman. Yes?

12 Mr. Jones. I believe I would like the record to
13 show also that members of the committee constantly refer
14 to this as aid to the student, aid to the institution, and
15 it is not deemed that. It is a tax credit to the parents,
16 number one.

17 Secondly, sir, the Federal Government provides
18 only 10 percent of the funding for the handicapped children
19 in this Nation, and the States and localities pick up the
20 rest. That money goes to the public schools. Now the Senator
21 is asking here that the Federal Government pass a law that
22 places an equal educational burden on a private school as
23 with a public school but with no additional money for it,
24 none whatsoever, to the institution.

25 The Chairman. Well, I think he has made it clear

1 that he does not intend that to happen, and I would just
2 try to make the record. I do not think that will happen.

3 Senator Long. I would hope, Mr. Chairman, that
4 we would try to see to it as far as we can that where parents
5 have handicapped children, the kind of tax advantage that
6 we provide to help them put children in private schools would
7 be available to them -- and perhaps in even greater degree,
8 at such time as we get into refinements or sophisticated
9 provisions to go along with this, as time will dictate --
10 that they ought to be entitled to an even greater tax credit
11 because they need more help to help pay the expense of
12 specialized schools where it is necessary to provide it.

13 There may be situations where not a public school
14 but a private institution is providing special remedial help
15 to handicapped children, and if so, I would hope that the
16 credit would be available. However, I am saying that the
17 credit for a handicapped child who cannot make it in the
18 ordinary public school should be available to go to the kind
19 of school that can teach that kind of child, not the one
20 that cannot teach them.

21 The Chairman. All right. Is that satisfactory,
22 Senator Chafee?

23 Senator Chafee. Yes, it is.

24 Senator Byrd. I would like to ask a question,
25 Mr. Chairman.

1 May I have the attention of the Treasury? Would
2 you have any problem with providing that the schools for
3 which tuition grants are utilized, that there be no
4 discrimination between sexes in athletic and social programs
5 where there is a mix; in a coeducational school, to provide
6 that there be no discrimination between sexes in athletic
7 and social programs.

8 Mr. Chapeton. Senator Byrd, I think we would very
9 much prefer that that not be included as a part of this
10 legislation for the reasons stated earlier, that it is
11 considered aid to the parent and not to the school, and I
12 see the additional very difficult problem of administering
13 a provision such as that and delving into the practices of
14 the school.

15 Senator Byrd. Well, now, don't we do that, Mr.
16 Reynolds? Don't we do that now? Your response to my questions
17 a little while ago led me to believe that that is the case
18 where Federal funds are involved.

19 Mr. Reynolds. There is a statute that Congress
20 passed that does indeed require nondiscrimination in
21 federally-funded programs, and if the athletic department
22 is a federally-funded program, then that would be the result.
23 I think that the suggestion that you are making is one that
24 would extend that concept well beyond where Congress has
25 left it to this date, and it seems to me that if that is

1 the direction that Congress wants to go, it would be much
2 better to take that up separately in terms of a --

3 Senator Byrd. Well, now, how does it go beyond
4 what you have already stated?

5 Mr. Reynolds. Well, because as we said before,
6 the legislation we are talking about here is to provide
7 tuition credits to parents. We are not talking about funds
8 going to schools. What your legislation would --

9 Senator Byrd. Well, that same thing applies to
10 race discrimination. It goes to parents, to the schools.

11 Mr. Reynolds. That is right.

12 Senator Byrd. However, you favor -- and I favor --
13 you favored the nonracial aspect which I favored. Now why
14 do you not favor the nonsexist aspect?

15 Mr. Reynolds. Well, I am not advocating that we
16 have anything in this bill that condones discrimination on
17 account of sex. I am just saying that the kind of legislation
18 that we are talking about here is one that addresses all
19 private schools and makes available to them tuition tax credits,
20 and it seems to me that we can hang a lot of ornaments on
21 this tree, if that is what the Senate wants to do. It seems
22 to me that is the road we are now going down, or we can take
23 the bill that we are addressing and we can go forward with
24 it.

25 Senator Byrd. Well, what I am asking you is this:

1 Why do you advocate that this legislation contain nonracial
2 discrimination but not nonsex discrimination?

3 Mr. Reynolds. The concern with the sex discrimination
4 concept, as I expressed before, is that you necessarily have
5 to at that point make a decision here in Congress that the
6 all-girl and all-boy schools are no longer permissible.

7 Senator Byrd. No, no, that is not my point. You
8 are misrepresenting my position. I am saying, in a
9 coeducational school, a coeducational school, that there
10 shall not be discrimination in social and athletic programs
11 on the basis of sex. Now will you address that?

12 Senator Bradley. Could someone please give me
13 a practical example of how this would work?

14 Senator Byrd. I think Mr. Reynolds can do that
15 because he just --

16 Mr. Reynolds. I did not hear that. I am sorry.

17 Senator Byrd. -- he just responded to me in regard
18 to what the law is now in regard to other schools, so you
19 could give Senator Bradley a practical example of how it
20 works now.

21 Mr. Reynolds. I am sorry. The Federal-aid program
22 as it works now?

23 If you have a situation now where an athletic
24 program, let's say the athletic program is federally-funded
25 and a female student wants to play on the male tennis team,

1 that might be one place where the question would be raised,
2 if denied, as to whether that raises a sex discrimination
3 question. Obviously, assuming in that hypothetical that
4 she was better than all the male tennis players on the team,
5 that clearly would raise a question.

6 It also is raised in a circumstance where the
7 athletic department receives Federal funds and distributes
8 them unevenly among the girls' basketball team, the boys'
9 basketball team, or soccer teams or what have you. In those
10 circumstances the law says that if you are receiving Federal
11 funds, you cannot discriminate on the basis of sex in any
12 federally-funded programs.

13 Senator Byrd. That is all I am suggesting in
14 regard to this. Why should this be different from other
15 educational institutions?

16 Mr. Chapeton. Senator, if I might respond, I
17 certainly see the logic in your analogy to the present rules
18 on public schools where there is Federal funding, but we
19 have to recognize, though, that such a rule here is going
20 to require further review of the practices and policies of
21 private schools which is getting quite far afield from the
22 purpose of this amendment, which is --

23 Senator Byrd. So is this amendment that has just
24 been adopted, the Bradley amendment, the revised Bradley
25 amendment; so is the Chafee amendment.

1 Mr. Chapeton. The Bradley amendment goes
2 partially that way. It does require an administrative
3 procedure, which is one of the things that has caused so
4 much discussion about the Bradley amendment. It would further
5 that problem, to put sex discrimination into the question.

6 Senator Byrd. Well, what I do not understand is,
7 why the Treasury Department and the Justice Department favor
8 the existing law preventing sex discrimination in
9 coeducational schools for athletic and social programs but
10 you do not favor extending that same nondiscrimination clause
11 to schools affected by the proposed legislation.

12 Mr. Chapeton. I will let Mr. Reynolds comment
13 on the policy with respect to federally-funded public schools,
14 but in this context where we are talking about tax credits
15 for the parents, we are trying to give relief to parents
16 who are paying tuition.

17 Senator Byrd. You are also doing that where racial
18 discrimination is involved. You have as a part of this
19 legislation now that there should be no racial discrimination,
20 even though the funds do not go to the school.

21 Mr. Chapeton. That is correct.

22 Senator Byrd. Now why should you not also apply
23 to this that there shall be no sex discrimination, even
24 though the funds do not go to the school?

25 Mr. Chapeton. I think the answer to that is, the

1 racial discrimination question has been a concern, that this
2 would enable schools to be established that might practice
3 racially discriminatory policies. That clearly is not anyone's
4 intent in this legislation, and that was to be made clear
5 by our proposals, and that was Senator Bradley's point.

6 The sex discrimination concern has not previously
7 been a concern in private schools and no one has suggested
8 that we should delve further into the practices of the
9 schools to deal with a concern that has not been raised.

10 Senator Byrd. Well, you say there has not been
11 sex discrimination but you do not know whether -- have you
12 made a study as to whether there has been sex discrimination
13 in the private schools?

14 Mr. Chapeton. No, sir. I do not know if --

15 Senator Byrd. What I am trying to understand is
16 the logic of why you are not willing to apply the present
17 law, which you are doing in regard to racial discrimination --
18 you are applying that to this legislation -- why you are
19 not willing to apply the present law in regard to sex
20 discrimination. It has nothing to do with separate schools.
21 That does not have anything to do with this. I am talking
22 about coeducational schools.

23 Mr. Chapeton. Senator, would you envision -- what
24 type of administrative review would you envision that would
25 make that determination?

1 Senator Byrd. The same administrative review as
2 you have for racial discrimination, put it on the same basis,
3 race and sex.

4 Mr. Chapeton. In reviewing this situation, the
5 problem that we see, again recognizing the logic of the points
6 you are making -- that a Federal policy exists on sex
7 discrimination as well as race discrimination -- we certainly
8 agree, we all recognize that we are dealing with private
9 institutions here and that the intent is to give relief to
10 parents who are paying the cost of sending their children
11 to private schools. That is the basic intent of this
12 legislation, and not benefit to the school itself.

13 We do think that it is desirable to have a strong,
14 clear requirement in the law on the race discrimination
15 question. When you get into these other questions such as
16 the handicapped question and the sex discrimination question,
17 you do continually raise the question of additional cost
18 to the school.

19 For example, if a sports program were maintained
20 by a private school, I understand, under your amendment --
21 as is the case under public schools now -- a separate,
22 equally-funded sports program would have to be maintained
23 for girls in the case of football teams, as I understand
24 it, as Mr. Reynolds has described the present law. That
25 would mean additional outlay of funds for these private

1 schools. That is the type of problem that we are trying
2 to avoid, and I think it would very seriously limit the
3 ability of these schools to operate.

4 In the case of public schools, it is additional
5 funding as well, and these funds are required from public
6 sources.

7 Senator Byrd. Therefore, you draw a distinction,
8 then, between racial discrimination and sex discrimination.

9 Mr. Chapeton. I am drawing a distinction between
10 racial discrimination and sex discrimination on that ground,
11 yes, sir.

12 Senator Byrd. Well, it seems to me that if you
13 are going to -- the grounds for using the racial
14 discrimination is that public funds are involved. They do
15 not go to the school but they do go to the parent and from
16 the parent to the school, or the parent gets the benefit
17 of a tax credit. Now what I do not understand, it seems
18 to me if you are going to pass this legislation and say that
19 there shall not be racial discrimination -- and I agree with
20 that --- then why should you not say that there will not
21 be sex discrimination? I do not see why the women should
22 be discriminated against.

23 Senator Bradley. What was the Senator's position
24 on ERA?

25 Senator Byrd. I voted to submit that to the States

1 for consideration.

2 Senator Bradley. Thank you.

3 Any other questions?

4 [Laughter.]

5 Mr. Reynolds. Senator, let me just underscore
6 what Secretary Chapeton just said. In private education,
7 where public funds are going to the institution to help
8 finance these kinds of programs, the Government does insist
9 on nondiscriminatory treatment. I think that what you are
10 suggesting is, without that of funding, to impose this
11 additional burden on the private schools.

12 I think that Congress has certainly wrestled with
13 this issue before under title 9, and indeed has done it in
14 other statutes -- title 6 of the Civil Rights Act and section
15 504 of the Rehabilitation Act -- and it has made the judgment
16 for all that when those burdens are to be imposed on
17 institutions and facilities of this sort, that the funding
18 of the Federal Government is what is going to assist in
19 alleviating that burden and there should be nondiscrimination
20 when you get those funds.

21 I think that your suggestion goes well beyond that
22 and really does impose on the private sector --

23 Senator Byrd. I do not see how it does go beyond
24 that under your own reasoning. Your own reasoning, in regard
25 to the racial discrimination, is that public funds indirectly

1 are used.

2 Mr. Reynolds. No, I do not think that that is
3 the reasoning that we are talking about in the racial context.
4 The funds, the credit goes to the parents here, not to the
5 institution.

6 Senator Byrd. The credit goes to the parents but
7 that same credit applies and goes to the parents in regard
8 to racial discrimination.

9 Mr. Reynolds. That is right.

10 Senator Byrd. I see no distinction, as to why
11 there should be a distinction between racial discrimination
12 and sex discrimination. Both, it is the basic policy of
13 our country, the basic philosophy laid down by the Congress,
14 that there shall not be sex discrimination or racial
15 discrimination, yet in this law you want to apply one but
16 not the other. I think we ought to apply it to both.

17 Mr. Chapeton. We are recognizing, Senator, the
18 point that it would require expenditure of additional funds
19 by the private schools to maintain a nondiscriminatory
20 sports program, for example, for boys and girls.

21 Senator Byrd. I do not know why it would be
22 additional funds. It is just a question of whether a man
23 goes on this team or a woman goes on this team. It does
24 not require additional funds.

25 Mr. Jones. Senator, you still have --

1 Mr. Reynolds. Therefore, you understand it only
2 as requiring, in a coeducational institution, that you have
3 coeducational teams and that we would no longer have an all-
4 girls or an all-boys team or --

5 Senator Byrd. Well, you cannot have that now,
6 according to what you told me a moment ago.

7 Mr. Reynolds. No, certainly you can have that
8 as long as the funding that is provided is even-handed.

9 Senator Byrd. As I understood what you told me
10 earlier, a school could not discriminate -- if they were
11 receiving Federal funds -- could not prevent a female from
12 being on a team.

13 Mr. Reynolds. They could also have an all-girls
14 teams and an all-boys team.

15 Senator Byrd. Well, I will amend my proposal to
16 make it exactly the way it is now, if they want to have an
17 all-girl and an all-boy, but if they have only one that there
18 cannot be discrimination, make it exactly what the law is
19 now. If you do not regard that as being reasonable, then
20 I would think you would not regard the present law as being
21 reasonable.

22 Mr. Reynolds. The present law only speaks to the
23 distribution of Federal funds.

24 The Chairman. I think, unless Senator Byrd would
25 like to discuss it further -- that is the amendment, and

1 the administration is opposed to it?

2 Mr. Chapeton. That is correct, we are opposed.

3 Senator Mitchell. Mr. Chairman, could we have
4 the amendment restated so that we would know, we would be
5 certain what we are voting on?

6 Senator Byrd. The amendment, Senator Mitchell,
7 is to say that there shall be no -- just as there can be
8 no racial discrimination, there can be no discrimination
9 on the basis of sex, and that the law as it applies to all
10 other educational institutions in regard to no sex
11 discrimination would apply in this legislation.

12 Senator Mitchell. However, would you permit the
13 continued existence of separate schools for boys or girls
14 where they now exist in school systems, and permit that to
15 continue?

16 Senator Byrd. Yes, correct. It is only where
17 there is a coeducational institution --

18 Senator Mitchell. This applies only to
19 coeducational institutions.

20 Senator Byrd. That is right.

21 Senator Mitchell. Thank you.

22 The Chairman. If they only have one basketball
23 team, it has to be mixed.

24 Senator Byrd. The female would have the right
25 to apply, to seek admission to that basketball team, or the

1 male as the case might be.

2 Senator Mitchell. You are talking about the same
3 standards that now apply to public schools in that respect?

4 Senator Byrd. Correct, correct.

5 The Chairman. Is that the way you understand the
6 amendemnt? As the administration understands it, they are
7 opposed to what was just stated. Is that correct?

8 Mr. Reynolds. That is correct.

9 Senator Byrd. You are opposed to applying the
10 same standard to the private schools that you now apply to
11 the public schools?

12 Mr. Reynolds. That is correct, Senator, if it
13 does not include any additional public funding as occurs
14 with the public schools.

15 The Chairman. However, you are not suggesting
16 that -- again, getting back to the handicapped example --
17 that there is any discrimination, strictly in admission,
18 in a coeducational facility there would be no discrimination
19 based on sex. I mean, there is no quarrel with that. It
20 is only the same argument, if it is going to get into
21 financial burdens on the institution.

22 Mr. Reynolds. As I understand Senator Byrd's
23 amendment, it goes beyond admission --

24 The Chairman. Right.

25 Mr. Reynolds. -- and we are talking about various

1 programs in the private schools, and as I understand what
2 he is saying, he would prefer in a coeducational institution
3 that all those programs be coeducational, as your example,
4 therefore, the basketball team should have, I guess, an even
5 distribution of males and females on the team.

6 Senator Mitchell. No, that is not what he said.
7 That is not what he said.

8 Senator Byrd. I did not.

9 Senator Mitchell. He did not say anything would
10 be required. It is now required, the public standard applies,
11 and yet all across this country thousands and thousands of
12 high school basketball teams have all boys or all girls.
13 The characterization which you gave to his statement is
14 absolutely incorrect, regarding what he said. That is not
15 the amendment as I understand it.

16 Senator Byrd. Well, the Senator from Maine is
17 exactly right and Mr. Reynolds is exactly wrong, You
18 misstated the case entirely.

19 Senator Bradley. Well, does this mean that if
20 you have a girls' team you have a boys' team, so that they
21 each have equal access to the activity, or in this amendment
22 are you saying these activities have to be coeducational?

23 Senator Byrd. It does not say these activities
24 have to be coeducational, it says that there shall not be
25 discrimination against either sex in forming an athletic

1 program or a social program.

2 Senator Packwood: What happens, Harry, if you
3 have a private school league and the private school has boys'
4 football and they do not have girls' football? What does
5 the school do? Is it discrimination if they do not have
6 a girls' football team?

7 Senator Byrd. Well, I will put that question to
8 Mr. Reynolds because the answer to that question will be
9 precisely the same answer as what applies today to the public
10 school team under those conditions.

11 Mr. Reynolds. They would not have to have a girls'
12 football team.

13 Senator Byrd. They would not have to have a girls'
14 football team.

15 The Chairman. Would they have to have girls on
16 the boys' football team?

17 Mr. Reynolds. I believe that if a girl sought
18 to be on the team and she could make it because she --

19 Senator Byrd. That is the law today, so all I
20 am suggesting is that we ought to make -- well, that is what
21 he just said.

22 Senator Packwood. That is not the law today in
23 public schools, is it? If there is no girls' football league,
24 that the girls can try out and play on the boys' team? Is
25 that the law for public schools today?

1 Mr. Reynolds. I think that is right.

2 Senator Packwood. What?

3 Mr. Reynolds. Yes, I think that is right.

4 Senator Byrd. His answer is yes. He said it very
5 silently but his answer is yes, that is the law today, and
6 all I am suggesting is, if that is the law today for public
7 schools, why should it not be the law under this legislation
8 for private schools?

9 Senator Packwood. I am not sure that is the law
10 today for public schools.

11 Senator Byrd. Well, I don't know. He is the
12 Assistant Attorney General.

13 Mr. Jones. Senator, again, the private schools
14 are not getting public funds.

15 Senator Chaffee. The impression is given here
16 that when this antidiscrimination law went through, that
17 for some reason additional funding was provided to the public
18 schools to cover this. That is not true at all. There is
19 no additional funding provided from the Federal Government
20 for sports in the public schools.

21 Mr. Jones. They are getting public funding, though.

22 Senator Chafee. Sure, they are getting public
23 funding, but it did not come from the Federal Government,
24 this public funding.

25 The Chairman. Are we ready to vote, Harry? Do

1 you want a record vote?

2 The clerk will call the roll.

3 The Clerk. Mr. Packwood?

4 Senator Packwood. No.

5 The Clerk. Mr. Roth?

6 [No response.]

7 The Clerk. Mr. Danforth?

8 [No response.]

9 The Clerk. Mr. Chafee?

10 Senator Chafee. Aye.

11 The Clerk. Mr. Heinz?

12 [No response.]

13 The Clerk. Mr. Wallop?

14 The Chairman. No.

15 The Clerk. Mr. Durenberger?

16 [No response.]

17 The Clerk. Mr. Armstrong?

18 [No response.]

19 The Clerk. Mr. Symms?

20 [No response.]

21 The Clerk. Mr. Grassley?

22 The Chairman. No.

23 The Clerk. Mr. Long?

24 Senator Long. No.

25 The Clerk. Mr. Byrd?

1 Senator Byrd. Aye.

2 The Clerk. Mr. Bentsen?

3 [No response.]

4 The Clerk. Mr. Matsunaga?

5 [No response.]

6 The Clerk. Mr. Moynihan?

7 Senator Moynihan. No.

8 The Clerk. Mr. Baucus?

9 [No response.]

10 The Clerk. Mr. Boren?

11 [No response.]

12 The Clerk. Mr. Bradley?

13 Senator Bradley. Aye.

14 The Clerk. Mr. Mitchell?

15 Senator Mitchell. Aye.

16 The Clerk. Mr. Chairman?

17 The Chairman. No.

18 The vote is 6 nays, 4 yeas, and the record will
19 be kept open, and Senator Byrd's absentees can be recorded.

20 Senator Chafee. Mr. Chairman, what became of my
21 amendment that the institution must be an accredited one?

22 The Chairman. Nothing. I mean, we were just hoping
23 you might forget it, but --

24 [Laughter.]

25 Senator Chafee. Well, I --

1 The Chairman. -- but you have not, so we will
2 consider that now.

3 Senator Chafee. All right. My amendment is a
4 very simple one, and that is that no credit shall be allowed
5 for amounts paid to an educational institution during a
6 calendar year unless the institution has received accreditation
7 by a competent State educational authority.

8 Senator Packwood. The figures I have on that,
9 John, is that only five States have mandatory accreditation.
10 What happens to the States where you do not have accreditation?

11 Senator Chafee. Well, there must be some way in
12 which, for instance, the public schools are accredited.

13 Senator Packwood. Well, I have a list that is
14 from the Executive Assistant Secretary for Education, covering
15 all the States listing State accreditation: Alabama, voluntary;
16 Alaska, no; Arizona, voluntary; Arkansas, voluntary; California,
17 no; Colorado, voluntary; Connecticut, no; Rhode Island,
18 voluntary. There are only five States that have mandatory
19 accreditation.

20 Senator Chafee. Well, it seems to me if we are
21 putting out Federal monies and we are allowing a credit for
22 expenditures, for Federal dollars, it ought to be going to
23 an accredited school. There must be some way for these
24 schools to have some form of accreditation. I cannot believe
25 a private school just exists in a vacuum with no --

1 Senator Packwood. Would the amendment be
2 satisfactory, John, if we said it will apply if the State
3 has a mandatory accreditation program?

4 Senator Chafee. Well, I think it ought to go to
5 an accredited school. Let the State have some form of
6 accreditation. I am not having the Federal Government do
7 it --

8 Senator Packwood. No, no, no. I mean, what happens
9 if there is no State accreditation? Then what do you do?

10 Senator Chafee. Well, with the growth of private
11 schools pursuant to this act, they ought to set up one.

12 The Chairman. Well, I think we understand the
13 amendment. Does the administration support it?

14 Mr. Jones. No, we do not. We do not support
15 Senator Chafee's amendment.

16 The Chairman. For the reasons stated by Senator
17 Packwood?

18 Senator Chafee. Well, you can go to any --

19 Mr. Jones. For reasons largely stated by Senator
20 Packwood, but our records do indicate that only five States
21 have mandatory accreditation standards. Many parents make
22 a choice as to which school they send their children to,
23 and they evaluate that school. If the State decides it is
24 or is not accredited, it may not make a difference to the
25 parents because they may send their children to that school

1 upon their own volition for specific reasons.

2 Senator Moynihan. Mr. Chairman, come, now, there
3 is no State in the Union that does not have some form of
4 accrediting schools.

5 Mr. Jones. Public schools, that is correct.

6 Senator Moynihan. Well, public schools, and I
7 think Mr. Chafee's amendment is entirely acceptable. Don't
8 be too persistent, Senator. There are only five States which
9 have made this process a State process, as against a school
10 district process or a city process or what not. What you
11 simply mean is accredited, a well-known, established idea,
12 and there is no reason why these schools should not be
13 accredited. Indeed, the overwhelming number are.

14 Senator Chafee. I would expect so, accredited
15 by somebody.

16 Senator Bradley. By "accredited" you mean
17 "approved."

18 Senator Chafee. Approved, by the county board
19 or whatever it is.

20 Senator Moynihan. There is invariably a mechanism
21 for saying, "This is a school, and children may be in there
22 during the day and receive education, and the grades given
23 them count toward the State law requiring you to go to school."
24 Now this is not a complicated thing. I mean, if we are
25 trying to support this legislation and make it good or make

1 it better, that is one thing. We do not want to just be
2 accepting amendments from people who are against the
3 legislation. I am sure we can write report language that
4 says that it is assumed that these schools are accredited
5 schools.

6 If I can say one more word, there is a simple
7 fact, Mr. Chairman: Every State of the Union requires that
8 children go to school. In order for a child to be in
9 compliance with that requirement, there has to be some
10 definition of what is acceptable under that term as a school.
11 Without exception, every jurisdiction in the country has
12 some such arrangement, and there is nothing mysterious about
13 this.

14 Senator Chafee. Yes. Also, Mr. Chairman -- I
15 am somewhat familiar with this area -- there are all forms
16 of organizations that do accreditation, a Middle Atlantic
17 States Accreditation Agency that inspects schools. I have
18 served on boards of private schools, and we go through
19 accreditation normally. It might not be with the local
20 authorities but they are accredited by somebody.

21 Senator Moynihan. I wonder if the Senator would
22 accept an amendment? He requires that the institution
23 receive accreditation by "competent State educational
24 authority." Would he drop the word "State"?

25 Senator Chafee. Sure, sure.

1 Senator Moynihan. Then I do not see why we should
2 have any concern about this.

3 Senator Long. Well, Mr. Chairman, in Louisiana
4 the logic as well as the rhetoric of President Reagan and
5 those who agree with him has made some headway, so that the
6 laws of Louisiana say that a private school can opt to be
7 accredited by the State agency if they want to but it is
8 not necessary. Louisiana just recently repealed all State
9 law requirements about licensing day care centers, and they
10 contend that there is no showing that any harm has resulted
11 from it, that people can set up day care centers and do not
12 have to go to a State licensing board.

13 Now I for the life of me cannot understand why
14 we want to require accreditation by anybody, by the State
15 government, if the people in that State do not deem it
16 necessary and do not deem it something that should be required.
17 I do not see why we want to require, if we are not going
18 to require the State them, I do not know why we want to require
19 that somebody else -- who? -- somebody, but who? -- accredit
20 them.

21 Therefore, it seems to me that that ought to be
22 left to the States to decide for themselves. If they want
23 to require accreditation of private schools they can, but
24 I think that it ought to be left up to the States to decide
25 whether they want to have an accreditation required of private

1 schools.

2 The Chairman. Has the administration had an
3 opportunity to look at the amendment with the proposed change
4 by Senator Moynihan?

5 Mr. Jones. At this point we do not see much of
6 a problem with Senator Moynihan's amendment. Excuse me.

7 The Chairman. Don't make it a problem if there
8 isn't any, you know.

9 Mr. Chapeton. It seems to me, I do not think we
10 have enough information on what this does, what schools are
11 accredited, when schools are not accredited. I think we
12 just would request a little more time to examine it. What
13 we are talking about is the existing private schools. I
14 think we would not be kindly disposed to something that
15 required a new accreditation system setup, and so we would
16 like to see what schools this affects.

17 The Chairman. Well, can that be --

18 Mr. Chapeton. I think it can be done shortly.

19 The Chairman. -- done in the next few minutes?

20 We don't want to make a career out of this bill.

21 [Laughter.]

22 Mr. Chapeton. Yes. If you will give us a few
23 minutes, we can come back to that.

24 The Chairman. All right. We have a couple of
25 other amendments. Maybe we can move on to other amendments

1 and then come back to this.

2 I would like to propose now an amendment that I
3 think has been satisfactorily worked out with those who were
4 concerned about antidiscrimination. That is an effective
5 date amendment, and I wonder, do you have copies of that
6 amendment? Why don't you just read the amendment, and get
7 the mike up where we can hear?

8 Mr. Morrison. This would be a new effective date
9 provision for the act. It reads as follows: "The amendments
10 made by this act shall not become effective until the Attorney
11 General certifies to the Secretary of the Treasury that,
12 pursuant to an act of Congress or a final decision of the
13 United States Supreme Court. the Internal Revenue Code of
14 1954 prohibits granting of tax exemption under section
15 501(c) (3) to private educational institutions maintaining a
16 racially discriminatory practice as to students."

17 The Chairman. Now it is my hope that this could
18 be substituted for the more specific language of the Bradley
19 amendment for a couple of reasons: First of all, it will
20 have broad support, and secondly, I think it accomplishes
21 precisely what Senator Bradley and others were concerned
22 about, without getting into specific language at a time we
23 are not certain what the facts may be 6 months or a year
24 from now.

25 It is my understanding the administration has

1 cleared the amendment or does support the amendment. Is
2 that correct, Mr. Reynolds?

3 Mr. Reynolds. That is correct, Senator

4 Mr. Chapeton. That is correct, yes, sir.

5 The Chairman. Mr. Jones? Yes?

6 Mr. Jones. Yes.

7 The Chairman. Maybe Senator Bradley would like
8 to be heard on the amendment.

9 Senator Bradley. After you. Are you finished?

10 The Chairman. Yes.

11 Senator Bradley. Mr. Chairman, the issue for me
12 has always been that no tax credit nor tax-exempt status
13 be granted to schools that practice racial discrimination.
14 My language did that in the amendment that I was offering
15 yesterday. The Dole amendment language will protect that
16 result, so that the victory that we achieved yesterday will
17 be affirmed with the Dole amendment.

18 I might say, Mr. Chairman, that the Finance Committee
19 several weeks ago contemplated reporting out the bill without
20 addressing the antidiscrimination sections, with the idea
21 of modifying them if necessary on the floor. I think that
22 this amendment, in addition to the changes that the
23 administration agreed to after the Finance Committee said
24 the first bill was not sufficient, has gone a long way toward
25 meeting all objections.

1 I have said all along that refundability and the
2 tax-exempt question and the discrimination question were
3 central to my support for the bill. This amendment says
4 in essence that if Bob Jones is affirmed and 501(c)(3) is
5 in operation as before, there will be IRS oversight with
6 audits, as under current law prior to the Bob Jones
7 disposition. If Bob Jones is reversed, then it will require
8 an act of Congress stating that there can be no tax-exempt
9 status until a school shows that they do not discriminate
10 racially.

11 The entire tuition tax credit program in that respect
12 is tied to the successful enactment of such a law. Mr.
13 Chairman, I would say that based upon this committee's response
14 to my amendment and to your amendment, that we would enact --
15 in the event that that occasion arose -- a very strong
16 replacement for the 501(c)(3) that would have been null and
17 void as a result of the Supreme Court.

18 Therefore, I can support this. It achieves the
19 purposes that I had initiated at the beginning.

20 The Chairman. Well, I want to commend the Senator
21 from New Jersey, and I would affirm what he has said with
22 reference to his concern and the concern of others about
23 antidiscrimination. I think we have moved in the right
24 direction.

25 I also understand this is satisfactory to Senators

1 Moynihan and Packwood --

2 Senator Moynihan. Yes, sir, as I so stated
3 yesterday, and I see Senator Packwood is nodding.

4 The Chairman. It would seem to me -- and I would
5 just say this -- again, we will make the decision but to
6 make a positive decision or to pass this bill is going to
7 take the efforts of the coalition, and it is their hope that
8 this language is a substantial improvement and that we will
9 not try to dilute it when it reaches the Senate floor. That
10 is why I am pleased that both Senators Moynihan and Packwood,
11 and Senator Bradley, now support the amendment. Is that
12 correct, Bob?

13 Senator Packwood. Absolutely. This accomplishes
14 everything that Senator Bradley wanted. It simply means
15 that you are going to achieve that result, whether it be
16 by Supreme Court decision or, if the decision is adverse,
17 by statute.

18 Senator Bradley. Mr. Chairman, I appreciate your
19 willingness to modify the amendment and I also think you
20 have played a very constructive role here, one you are
21 familiar with.

22 The Chairman. Senator Byrd?

23 Senator Byrd. I would like to ask Treasury or
24 Justice, either one, Bob Jones University has been mentioned.
25 As I understand it, if persons were to contribute to Bob

1 Jones University and not take tax deduction, charitable tax
2 deduction or educational tax deduction, then there would
3 be no way the Federal Government would be involved. Is that
4 right?

5 Mr. Chapeton. I think that is correct, yes, sir.

6 Senator Byrd. In other words, the reason the
7 Federal Government is involved is that tax deductions were
8 taken by taxpayers in making contributions to Bob Jones
9 University. Is that right?

10 Mr. Chapeton. That is correct. You have the
11 additional question of whether the school itself does not
12 pay tax on its income, if it is not entitled to tax exemption,
13 quite apart from whether it qualifies for the deduction of
14 contributions. If it were not entitled to tax exemption,
15 it would have to pay tax on any income it made.

16 Senator Byrd. Therefore, you are not dealing with
17 money going directly to the school; you are dealing with
18 a tax deduction taken by a taxpayer which effectively reduces
19 the amount of money the Treasury would otherwise get from
20 the taxpayer. That is how the Government becomes involved.

21 Mr. Chapeton. That, and the fact that any income,
22 net income it has, if any, is not taxable either.

23 Senator Byrd. Yes. Now Senator Bradley said that
24 he was anxious that no tax credit nor tax exemption shall
25 be granted if there is racial discrimination, and that

1 amendment taxes care of that aspect of it.

2 Now I will just point this out again: I see no
3 reason why sex discrimination should not be a part of this
4 because the same principle is involved. There is no Federal
5 money going to Bob Jones University. I am correct in that,
6 am I not? No appropriation is going to Bob Jones University.

7 Mr. Chapeton. That is correct. Yes, sir.

8 Senator Byrd. Therefore, it is the same principle,
9 but the same committee that is prepared to vote -- which
10 this member of the committee is -- for this nondiscriminatory
11 amendment dealing with race is not willing to vote for
12 nondiscrimination in regard to sex. I just want to make
13 that statement. I might say. the same Justice Department,
14 the same Treasury Department, and the same administration
15 is willing to support a nondiscriminatory clause in regard
16 to race but not in regard to sex.

17 The Chairman. Is there any other discussion?

18 [No response.]

19 The Chairman. If not, I would ask for the yeas
20 and nays on this amendment.

21 The Clerk. Mr. Packwood?

22 Senator Packwood. Aye.

23 The Clerk. Mr. Roth?

24 The Chairman. Aye.

25 The Clerk. Mr. Danforth?

1 [No response.]
2 The Clerk. Mr. Chafee?
3 Senator Chafee. Aye.
4 The Clerk. Mr. Heinz?
5 [No response.]
6 The Clerk. Mr. Wallop?
7 The Chairman. Aye.
8 The Clerk. Mr. Durenberger?
9 [No response.]
10 The Clerk. Mr. Armstrong?
11 [No response.]
12 The Clerk. Mr. Symms?
13 [No response.]
14 The Clerk. Mr. Grassley?
15 [No response.]
16 The Clerk. Mr. Long?
17 The Chairman. Aye.
18 The Clerk. Mr. Byrd?
19 Senator Byrd. Aye.
20 The Clerk. Mr. Bentsen?
21 The Chairman. Aye.
22 The Clerk. Mr. Matsunaga?
23 Senator Bradley. Aye by proxy.
24 The Clerk. Mr. Moynihan?
25 Senator Moynihan. Aye.

1 The Clerk. Mr. Baucus?

2 Senator Bradley. Aye by proxy.

3 The Clerk. Mr. Boren?

4 Senator Bradley. Aye by proxy.

5 The Clerk. Mr. Bradley?

6 Senator Bradley. Aye.

7 The Clerk. Mr. Mitchell?

8 Senator Mitchell. Aye.

9 The Clerk. Mr. Chairman.

10 The Chairman. Aye.

11 Senator Bradley. Senator Heinz asked to be recorded
12 as aye by proxy.

13 The Chairman. Senator Danforth, aye by proxy.

14 Senator Durenberger?

15 Well, the others may be recorded. The vote then
16 would be 16 yeas, no nays.

17 Now, I wonder if we have had an opportunity --

18 Senator Moynihan. Mr. Chairman, I understand that
19 the administration is opposed to the language of Senator
20 Chafee as modified by me. Is that right?

21 Mr. Chapeton. Senator Moynihan, that is my
22 understanding on the grounds that a number of private schools
23 today do not meet the test.

24 Senator Moynihan. All right, and Senator Long
25 had problems with it. Mr. Chapeton, let me ask you this

1 question: If a school is certified for tax exemption under
2 501(c)(3), the Internal Revenue Service would take care to
3 observe that this is a school, properly so called.

4 Mr. Chapeton. That is a point I started to make
5 earlier. That is a determination that must already be made
6 in every case here, that it is a school, that it is a
7 nonprofit school, that it carries on a full-time program
8 of education of students, classes, facilities, and is a
9 school.

10 Senator Moynihan. Mr. Chairman, I am going to
11 say, since we have now incorporated 501(c)(3) into this
12 language, as Senator Packwood and I originally intended,
13 the Internal Revenue Service can recognize a school when
14 it sees one. Really, they are not that mysterious as
15 institutions. They look about the same everywhere, truth
16 to tell, and they do about the same everywhere, truth to
17 tell.

18 I think we need not burden this bill with yet more
19 definitions. We incorporate a large number of definitions
20 by reference when we refer to 501(c)(3), so I would withdraw
21 my amendment. I obviously cannot withdraw Mr Chafee's.

22 Mr. Packwood, would you agree with that?

23 Senator Packwood. Well, I was going to vote no
24 anyway, but I am happy to have it withdrawn. However, I
25 am not sure that --

1 Senator Moynihan. However, I think the point that
2 we have now adopted -- in a small sense, our bill has changed
3 with the adoption of the 501(c)(3) language of Senator Dole.

4 The Chairman. Do you still want a vote on your
5 amendment, John?

6 Senator Chafee. Well, I certainly appreciate the
7 alacrity with which Senator Moynihan withdrew my amendment.

8 [Laughter.]

9 Senator Moynihan. I did say I could only withdraw
10 my modification.

11 Senator Chafee. The understanding here now as
12 I see it, as I understand it, is that because of the reference
13 to 501(c)(3) under the new Bradley amendment, if you want to
14 call it that, that takes care of what is an accredited school?

15 The Chairman. More or less.

16 Senator Chafee. Yes, I am not sure it does. No,
17 I am not willing to withdraw my amendment. If we are not
18 willing to say it has to be an accredited school, then we
19 are not standing for much around here, I don't think.

20 Senator Bradley. Does the Senator mean by
21 "accredited," the general sense, as Senator Moynihan had
22 stated earlier in his amendment?

23 Senator Chafee. Sure. That is right.

24 Senator Bradley. Or does he mean the rigid sense
25 of a specific State accreditation?

1 Senator Chafee. No, I am willing to take an agency,
2 I believe he said a competent educational agency. "So many
3 of these schools set up an organization of private schools
4 or whatever it is, and they do some accreditation, boarding
5 school accreditation and so forth, and I just think it makes
6 sense to have somebody accredit these places.

7 I am not going to demand a roll call vote. I will
8 have a voice vote if the chairman wants, but to not have
9 accreditation seems to me odd.

10 The Chairman. All in favor, say aye.

11 [A chorus of ayes.]

12 The Chairman. All opposed, no.

13 [A chorus of noes.]

14 Senator Chafee. Let's have a roll call vote.

15 Senator Bradley. Does this include private
16 accrediting agencies as well?

17 Senator Chafee. Sure.

18 Mr. Chapeton. Mr. Chairman, I would just point
19 out that what we are talking about are schools that parents
20 have elected to send their children to, that they obviously
21 think they are getting a good education and that their money
22 is being well-spent. We would, I am afraid, be talking by
23 this amendment seriously narrowing the scope of the schools
24 that qualify.

25 Senator Chafee. Well, I cannot believe that at

1 all. First of all, they are spending other people's money
2 besides their own, pursuant to this legislation, but I cannot
3 believe that any school that is of merit is not accredited.

4 Senator Moynihan. May I just say -- and I do not
5 want to prolong this -- there is no such thing as a school
6 operating in this country which is not accredited, excepting
7 those schools which are being closed down by sheriffs because
8 they are not. Every State in the Union requires, as a matter
9 of law, that students attend school. In order to meet the
10 truancy laws, certain institutions are defined, by some legal
11 body or other, to be a school that if you attend that, you
12 are in compliance with the truancy laws. There is no problem
13 here, I swear to you.

14 Senator Chafee. I see no objection to the amendment,
15 and I am prepared to have it accepted.

16 [Laughter.]

17 The Chairman. Well, I think it has been addressed
18 by Senator Moynihan, but it seems to me that he has covered
19 it fairly well. I assume there may be some religious schools
20 that may not be accredited based on first amendment grounds,
21 and I guess that is the issue. I do not know how many there
22 are, where they are, or who they are. Does anybody else
23 know?

24 Mr. Jones. If the question is, are all schools
25 accredited under State law, the answer is obviously no. Beyond

1 that, accreditation can take different forms but there is
2 no State law --

3 The Chairman. Well, he is willing to take out
4 the "State." Is that right?

5 Mr. Jones. However, we still do not wish to have
6 an accreditation standard in there.

7 The Chairman. Why?

8 Mr. Jones. It is not necessary when you are covered
9 by 501(c) (3) and the definition of a full-time school program
10 as listed in our law.

11 The Chairman. Well, it may not be necessary but
12 does it do something that you do not want to do?

13 Mr. Jones. Well, we do not believe that the
14 control of accreditation standards at local institutions
15 should be a Federal matter, for one thing. We believe that
16 parents have the right to choose to send their child to
17 whatever private school they so deem is appropriate for their
18 child, and why the Federal Government --

19 The Chairman. Are some examples that you know
20 of, schools that are not accredited -- I am not talking about
21 a State agency, but just are not? As Senator Moynihan points
22 out, most people recognize a school when they see one. Are
23 there some "schools" that are not accredited?

24 Mr. Jones. There may be some, sir, yes.

25 The Chairman. Well, are you aware of any? I am

1 just trying to see if there is a problem or not. If there
2 is no problem, then --

3 Mr. Jones. Well, the bill, if it becomes law,
4 would be there for X number of years, and we are saying that
5 forevermore, no longer could anyone start a school unless
6 it received some form of accreditation standard.

7 Senator Chafee. Mr. Chairman, may I present a
8 question to Mr. Jones and see whether this is covered by
9 the existing legislation? Let's assume that my church, which
10 is a 501(c)(3) organization, conducts a school in the
11 afternoon from 3:00 to 6:00 to teaching the Ukranian language
12 and charges tuition. Now is that school, is the tuition
13 that the pupil pays to go to that school subject to a tax
14 credit?

15 Mr. Jones. Well, it is a hypothetical question
16 and I have a real reluctance to answer a hypothetical
17 question, but as you describe it it appears it is not a full-
18 time program, and therefore the parents would not be eligible
19 for a tax credit.

20 Senator Chafee. In the law it has to be a full-
21 time school.

22 Mr. Jones. That is correct.

23 Senator Chafee. I see.

24 The Chairman. Did you finish?

25 Senator Chafee. Yes. To me, I cannot see any

1 reason in the world why they would object to this legislation
2 with this proposal which says that it has to go to a school
3 that is accredited.

4 The Chairman. Well, the word "accredited," how
5 is that defined? Is there some definition of "accredited"?
6 What does "accredited" mean?

7 Senator Moynihan. Can I speak on that? There
8 are all manners of organizations around. They vary from
9 very local to statewide, to private, what we call preparatory
10 schools, which give accreditation. In a very wide and
11 decentralized school system it is hard to say anything more
12 than that an association says, "Yes, you are an accredited
13 school," and if you go there that is held to meet the
14 truancy laws and also just as a seal of approval by peers,
15 and it works.

16 Every so often there are people who oppose it,
17 and some do for very legitimate reasons from their point
18 of view, but they always end up in the most awful problems
19 with some Government agency, and the famous photographs of
20 in Life magazine of Mennonite children being chased by an
21 IRS official and so forth, but there are very marginal
22 questions.

23 The Chairman. Well, is there some way we could
24 satisfy the administration? The problem is, we have too
25 many people here from the administration.

1 Mr. Jones. We do understand, Mr. Chairman, that
2 there are schools, Catholic schools in particular, that may
3 not be accredited or are not accredited. They would not
4 qualify under the bill, should it be amended.

5 Senator Chafee. If they are not, they ought to
6 be. No school was ever ruined by being accredited.

7 The Chairman. That is not a difficult thing to
8 do, is it? I am just trying to get information, which seems
9 to be sparse.

10 Mr. Jones. We prefer that we rest with the language
11 in the bill, Mr. Chairman, as if --

12 The Chairman. I know what you prefer, but we have
13 to pass the bill. Now my question was if we could define
14 what we mean by accreditation, as an eligible school must
15 be a school attendance at which satisfies the compulsory
16 education law of the State in which the school is located
17 or the student resides?

18 Senator Moynihan. Mr. Chairman, that would be
19 perfectly acceptable.

20 The Chairman. Is that all right?

21 Senator Chafee. It certainly would.

22 Mr. Jones. I could not hear it, Mr. Chairman.
23 I am sorry.

24 The Chairman. Well, an eligible school must be
25 a school, attendance at which satisfies the compulsory

1 education law of the State in which the school is located
2 or the student resides.

3 Mr. Jones. That is better than the previous
4 amendment.

5 Senator Moynihan. Mr. Chairman, I so move.

6 The Chairman. Is that all right?

7 Senator Chafee. That is fine.

8 The Chairman. Without objection, the amendment
9 will be adopted as modified.

10 Senator Grassley?

11 Senator Chafee. May we have a roll call on that?

12 The Chairman. Sure.

13 The Clerk. Mr. Packwood?

14 Senator Packwood. Aye.

15 The Clerk. Mr. Roth?

16 [No response.]

17 The Clerk. Mr. Danforth?

18 [No response.]

19 The Clerk. Mr. Chafee?

20 Senator Chafee. Aye.

21 The Clerk. Mr. Heinz?

22 [No response.]

23 The Clerk. Mr. Wallop?

24 [No response.]

25 The Clerk. Mr. Durenberger?

1

[No response.]

2

The Clerk. Mr. Armstrong?

3

[No response.]

4

The Clerk. Mr. Symms?

5

[No response.]

6

The Clerk. Mr. Grassley?

7

Senator Grassley. Aye.

8

The Clerk. Mr. Long?

9

[No response.]

10

The Clerk. Mr. Byrd?

11

[No response.]

12

The Clerk. Mr. Bentsen?

13

[No response.]

14

The Clerk. Mr. Matsunaga?

15

[No response.]

16

The Clerk. Mr. Moynihan?

17

Senator Moynihan. Aye.

18

The Clerk. Mr. Baucus?

19

[No response.]

20

The Clerk. Mr. Boren?

21

[No response.]

22

The Clerk. Mr. Bradley?

23

Senator Bradley. Aye.

24

The Clerk. Mr. Mitchell?

25

Senator Mitchell. Aye.

1 The Clerk. Mr. Chairman?

2 The Chairman. Aye.

3 On this amendment, the yeas are 8, the nays are
4 zero, and other members may be permitted to be recorded.

5 Senator Grassley?

6 Senator Grassley. Members of the committee,
7 yesterday you will remember I offered an amendment which
8 was left open to vote and evidently defeated in the final
9 analysis. My amendment at that point would have reduced
10 the phase-out starting at \$30,000 and have a complete phase-
11 out by \$50,000. I said yesterday that I would offer
12 another amendment and it would be the last one on this subject --
13 because I know we can play this number game forever and I
14 do not want to do that -- which would leave Chairman Dole's
15 figure at \$40,000 for the start of the phase-out and end
16 the phase-out at \$50,000. Now you will remember from my
17 comments yesterday that, based upon the rhetoric of the 1981
18 tax bill in which we were classifying people in \$20,000 to
19 \$50,000 categories as middle-income class, and every effort
20 at that time to help middle-income people fell within that
21 range, my effort on this bill in my amendment is to target
22 this bill basically toward low- and middle-income people,
23 of course phasing it out completely at what would be the
24 upper middle-income classification of \$50,000.

25 Therefore, I offer that amendment. I hope that

1 the compromise between what Chairman Dole started with at
2 \$40,000 with a final phase-out at \$50,000 is a reasonable
3 one and would be accepted by the committee so that we can
4 justify this bill from the standpoint of helping low- and
5 middle-income people, and also dovetailing that with the
6 fact that right now we ought to start this bill out in an
7 effort so that it does not impact dramatically on the Federal
8 Treasury and so that there will be some savings by doing
9 this.

10 The Chairman. I want to hear from the administration
11 on this because I know their original proposal was \$50,000
12 to \$75,000, and then we changed it to \$40,000 to \$60,000.
13 This would be \$40,000 to \$50,000. I think there was some
14 disagreement on even coming down to the \$60,000.

15 Mr. Chapeton. That is correct, Mr. Chairman. We
16 started out, a number is picked and it is necessarily somewhat
17 arbitrary. We had picked \$50,000 to \$75,000 for the reasons
18 we discussed yesterday. Where you have two working parents
19 that is not necessarily a large income, and if you have a
20 number of children the expense of private schools can be
21 quite significant.

22 The chairman's amendment dropped it to \$40,000
23 to \$60,000. This would make it \$40,000 to \$50,000. It would
24 be a very rapid phase-out as well, so that as income increased
25 the benefit would decrease dramatically. I think for all

1 those reasons we would oppose it.

2 The Chairman. Is there any further discussion
3 of the amendment?

4 Senator Bradley. Mr. Chairman, does the Treasury
5 yet know the amount of revenue that would be saved if we
6 reduced it to \$50,000, phased-out from \$40,000 to \$50,000
7 instead of \$40,000 to \$60,000?

8 Mr. Chapeton. I think the Joint Committee has
9 a figure.

10 Mr. Brockway. Senator, the Grassley amendment
11 would reduce the present revenue cost of \$245 million down
12 to \$229 million. That is \$16 million. That is in 1984.
13 In 1985 it would be reduced from \$526 million to \$491 million.
14 That is pick-up of \$35 million. In 1986 it is \$50 million,
15 in 1987 it is \$53 million. It runs on that trajectory.

16 Senator Bradley. Therefore, if I look at those
17 numbers and read them properly, if we adopt the Grassley
18 amendment that is more than enough to cover the refundability
19 portion of the bill.

20 Senator Grassley. That will take care of that
21 issue of tax replacement that Senator Danforth was concerned
22 about, at least partially.

23 The Chairman. Well, you know, I do not have any
24 strong feeling, except that again I think there was general
25 agreement on the original proposal which we modified because

1 of the cost, and I assume the administration feels rather
2 strongly --

3 Mr. Chapeton. Yes, Mr. Chairman, I think we are
4 sort of bit by bit reducing the purpose of this, and I think
5 it is desirable too to have the phase-out spread so it is
6 not precipitous when you reach these income levels, and a
7 lot of people are going to be in these income levels. They
8 will have to calculate and they will find that the credit
9 is meaningless to them.

10 The Chairman. If there were some way -- I mean,
11 if it is going to be fixed at \$40,000 to \$50,000, I assume
12 we are looking at the fix 10 or 20 years from now. Is there
13 anything in there that is going to permit any adjustment
14 of those figures?

15 Mr. Chapeton. No, sir, there is not, so it would
16 be eaten away by inflation, whatever figure you set, unless
17 you index it or change it year-to-year.

18 The Chairman. I am not suggesting that. I am
19 just suggesting that I assume things may change in 10 or
20 20 years, that wages will continue to go up and salaries --

21 Senator Bradley. Is the chairman suggesting
22 indexing?

23 The Chairman. No, I was not suggesting that. I
24 was just trying to make the point that we have a fairly narrow
25 window for the phase-out from \$40,000 to \$50,000.

1 Senator Bradley. Mr. Chairman, if I could just
2 speak to the point, clearly we are trying to save as much
3 as we can. We did something that the administration had
4 said they did not want, which was put in refundability, which
5 the committee felt was central to get this kind of
6 assistance to low-income families, and then we had to face
7 the question, How are we going to pay for that? Senator
8 Danforth proposed luxury taxes and Senator Long proposed
9 either tax increases or budget cuts to make the difference
10 up.

11 It seems to me that this is a very appropriate
12 match, and that \$40,000 to \$50,000 is not precipitous, really.
13 I think it is fully consistent with the committee's intent.
14 I hope the committee will adopt the Grassley amendment.

15 Senator Byrd. Mr. Chairman?

16 The Chairman. Senator Byrd.

17 Senator Byrd. The chairman mentioned looking ahead
18 40 or 50 years, I believe, 20 or 30 years, 20 or 40 years.
19 If it is not illegal, I will put \$100 on the table against
20 \$10 that this issue will come up every year, beginning in
21 1983, to increase whatever figure is put in the bill today,
22 so I do not think we have to worry about what is going to
23 happen 30 years from now.

24 The Chairman. We could tie it to members' pay.
25 That would be one way to make certain it would not increase.

1 [Laughter.]

2 Senator Bradley. Either members' pay or the gym.

3 The Chairman. I think we have had enough discussion
4 unless the administration wants to be heard again.

5 Mr. Chapeton. No. We did, by the committee's
6 amendment, reduce the cost significantly. My understanding
7 of that was, in large part, keeping in mind that you would
8 adopt refundability and therefore take care of the cost
9 objection to refundability, but beyond that I have nothing
10 more.

11 The Chairman. The clerk will call the roll.

12 The Clerk. Mr. Packwood?

13 Senator Packwood. No.

14 The Clerk. Mr. Roth?

15 The Chairman. Mr. Roth, no.

16 The Clerk. Mr. Danforth?

17 [No response.]

18 The Clerk. Mr. Chafee?

19 Senator Danforth. Chafee votes aye.

20 The Clerk. Mr. Heinz?

21 [No response.]

22 The Clerk. Mr. Wallop?

23 [No response.]

24 The Clerk. Mr. Durenberger?

25 [No response.]

1 The Clerk. Mr. Armstrong?
2 [No response.]
3 The Clerk. Mr. Symms?
4 [No response.]
5 The Clerk. Mr. Grassley?
6 Senator Grassley. Aye.
7 The Clerk. Mr. Long?
8 [No response.]
9 The Clerk. Mr. Byrd?
10 Senator Byrd. Aye.
11 The Clerk. Mr. Bentsen?
12 [No response.]
13 The Clerk. Mr. Matsunaga?
14 [No response.]
15 The Clerk. Mr. Moynihan?
16 Senator Moynihan. Aye.
17 The Clerk. Mr. Baucus?
18 [No response.]
19 The Clerk. Mr. Boren?
20 [No response.]
21 The Clerk. Mr. Bradley?
22 Senator Bradley. Aye.
23 The Clerk. Mr. Mitchell?
24 Senator Mitchell. Aye.
25 The Clerk. Mr. Chairman?

1 The Chairman. I vote no, and Senator Long votes
2 no.

3 Senator Danforth. Danforth votes aye.

4 The Chairman. The yeas are 7, the nays are 4,
5 and the amendment is agreed to.

6 Now are there further amendments? Senator Danforth?

7 Senator Danforth. Mr. Chairman, if it has not
8 been disposed of already, and I do not think it has, Senator
9 Long had a suggestion yesterday relating to how to pay for
10 the program, and I am told that Mike Stern is prepared to
11 describe it.

12 Mr. Stern. The amendment relates to the effective
13 date, and it would say that the tax credit would not be
14 implemented until the Congress makes it effective in subsequent
15 legislation which contains revenue raising and spending
16 reducing measures, not including spending reductions in
17 education, or a combination of both that would be equivalent
18 to the estimated revenue losses generated by the tuition
19 tax credit program over some reasonable period, and the
20 committee report would say that that would be at least a
21 5-year period. Therefore, you would need a specific
22 implementing, effective date in a piece of subsequent
23 legislation, and that subsequent legislation would be the
24 legislation that pays for it through some combination of --

25 Senator Danforth. It would be specifically

1 identified, correct?

2 Mr. Stern. That is correct. You would need
3 specific language that identified it.

4 Senator Danforth. I mean, that is right, in the
5 subsequent legislation it would be specifically earmarked
6 for this program?

7 Mr. Stern. Well, in effect, yes. The idea, and
8 this is following on the comment of Senator Chafee, is that
9 you should not have litigation about is it paid for or isn't
10 it paid for --

11 Senator Danforth. Right.

12 Mr. Stern. The Congress would identify that this
13 is the legislation that is doing it at the time they do it.

14 Senator Danforth. Yes. Right.

15 The Chairman. Well, I would like to hear from
16 the administration but it seems to me that if we are going
17 to do this, we ought to recognize that we have already
18 included one change in the effective date with the
19 antidiscrimination language. We have already invoked one
20 contingency into the statute that is going to delay tuition
21 tax credits until 1983 at the earliest, and likely much later.
22 We have at least a year to find a way to pay for tuition
23 tax credits. This is simply an attempt to defer the real
24 judgment on tuition tax credits, and we are permitting
25 another committee, Appropriations, for instance, to make

1 final judgment on the question of tax policy. I assume if
2 we are going to say that we are not going to pass out any
3 legislation in this committee unless it is paid for in advance,
4 that we are setting that precedent here by in effect
5 suggesting that this will not be effective unless there is
6 also some way to pay for it.

7 My view was -- and in addition we have just further
8 reduced what the administration considers to be the impact
9 of this legislation with the adoption of the Grassley
10 amendment -- we are going to have so many contingencies
11 included in this legislation that it may not be worth much,
12 if in fact it is finally adopted. Now I think yesterday
13 I was prepared to support a specific amendment, but then
14 we added a contingency which would delay the effective date
15 probably beyond July 31, 1983, with the compromise on the
16 antidisrimination language. I am not certain when that
17 might take place.

18 Plus, I think we have totally overlooked the fact
19 that there might be an economic recovery, and if in fact
20 there is an economic recovery, we ought to allow the
21 improving economy, which will alter revenue and spending
22 estimates, to fund tuition tax credits. I think revenue
23 increases from additional economic activity are just as real
24 as revenue increases voted on by a subsequent Congress.

25 I would hope -- and I do not know how many votes

1 there will be for this amendment, because it sounds good,
2 it is responsible in the sense that it delays tuition tax
3 credits, if that is the thrust -- but we do have --

4 Senator Danforth. Mr. Chairman, I have to object
5 to the characterization. I have never attempted to delay
6 tuition tax credits. In fact, on the first day of this markup
7 I suggested that we figure out some way to pay for it.
8 Yesterday, I suggested a specific method of paying for it
9 which could be put in place immediately. Either of those
10 ideas is fine with me. I have suggested that we do it by
11 raising revenue. I have not suggested delegating any
12 responsibility to the Appropriations Committee, unless we
13 fail to do the job ourselves.

14 With respect to contingencies, I suppose the
15 contingency of all contingencies should be, but is not, that
16 we in the Federal Government should not do things we cannot
17 pay for.

18 The Chairman. However, I would at least think
19 we could modify the amendment which would indicate that if
20 revenues increase and spending decreased because of economic
21 recovery, in an amount adequate to defray the additional
22 revenues lost by tuition tax credits, the credits would
23 automatically go into effect. It ought to be balanced in
24 the sense that if in fact we have economic recovery and
25 revenues do increase, that that might also be an aspect that

1 should be considered, but I do not quarrel with the Senator
2 from Missouri. I know of his support for tuition tax credits.
3 I know of his concern about payment. In fact, he had prepared
4 a specific amendment, a luxury tax amendment.

5 It was my hope that since we delayed the effective
6 date so that there would be no revenue impact in Fiscal Year
7 1983, that we might have that time in which to find some
8 more specific way to address the problem, but I certainly
9 want to hear from the administration.

10 Mr. Chapeton. Mr. Chairman, I think we will
11 strongly oppose this amendment for the reasons you state.
12 I would add, mention to you, two specific aspects: One,
13 I think because of the contingency and the way the amendment
14 is drafted, it would preclude the possibility of tuition
15 tax credits during calendar 1983 because there would have
16 to be revenue-raising legislation in 1983, and then that
17 would be effective in the following calendar year, as I
18 understand it.

19 The Chairman. Mike, is that --

20 Mr. Stern. The way we were drafting it, we were
21 just going to track exactly the effective date provisions
22 that the committee had already agreed to under your
23 modification, Mr. Chairman, meaning that in any case it could
24 not be taken before calendar year 1983 with respect to
25 expenses incurred after July 31, 1983. I do not think there

1 is any difference in that one respect.

2 Mr. Chapeton. Are you saying that under the bill
3 as now worked on by the committee, assuming the other
4 contingency that we have dealt with as met, the credits would
5 be available if paid after July 31 and they --

6 Mr. Stern. If they met the other criteria of the
7 amendment that Senator Danforth and Senator Long were
8 proposing.

9 Mr. Chapeton. However, on a calendar 1983 deductions
10 could be taken, you are saying?

11 Mr. Stern. If the other conditions were met of
12 paying for the amendment, yes, that would be the effective
13 date. It just could not be earlier.

14 For example, if next year the Congress were to
15 pass a tax increase and identify in that tax increase that
16 that was to pay for or part of it was to pay for the tuition
17 tax credit, then the credit could be effective for returns
18 filed in April, 1984 with respect to expenditures, payments
19 to schools after July 31, 1983.

20 Mr. Chapeton. If the subsequent legislation were
21 passed, I guess, before --

22 Mr. Stern. That is correct.

23 Mr. Chapeton. Therefore, they would have a half
24 a year.

25 Senator Moynihan. Are you talking about legislation

1 earmarked for this purpose?

2 Mr. Chapeton. Yes.

3 Mr. Stern. Well, it would not literally be earmarked
4 in the sense of saying that the money has to go into a trust
5 fund but it would have to be earmarked by the Congress in
6 the sense of saying that this legislation is the legislation
7 that was referred to --

8 The Chairman. Do you fight the tuition tax credit
9 battle all over again, then?

10 Senator Moynihan. Then we have not passed a bill
11 today.

12 The Chairman. If you are opposed to tuition tax
13 credits, you would argue that this revenue was not being
14 raised or the spending was not being cut for that purpose.
15 Is that --

16 Mr. Stern. This envisions that you would need
17 subsequent legislation which not only did pay for it but
18 said that it was paying for it.

19 Mr. Chapeton. It would, would it not, bring something
20 of the appropriation process into the tax-raising process?

21 Mr. Stern. That I do not see. I envisioned that
22 what would happen is, in fact, if you do a bill next year
23 that raises taxes or cuts spending, that this would just
24 be an additional provision that you would put in.

25 Senator Byrd. May I ask Treasury this question:

1 Are there any other taxes, leaving out trust funds, are there
2 any other taxes that are earmarked or indirectly earmarked
3 as this one is?

4 Mr. Chapeton. I know of none, Senator. Of course,
5 the trust funds are earmarked and we have additionally
6 opposed increased use of the trust fund concept because of
7 the difficulties that does cause. I would suggest that this
8 is not good precedent for this committee, either, when it
9 adopts a tax amendment that does lose revenue, that it then
10 must qualify the effectiveness of that amendment by a
11 subsequent amendment which will earmark to make up that revenue,
12 which will of course require debate on the same issues on
13 the subsequent amendment.

14 Finally, Mr. Chairman, I would say that certainly
15 in the administration's view there is no trade-off of public
16 school funds by reason of this amendment whatsoever. I know
17 that was part of Senator Danforth's concern.

18 Senator Bradley. Mr. Chairman, do you think that
19 it would be appropriate for the committee to have a statement
20 of intent in regard to what Mr. Chapeton just said?

21 The Chairman. I do not quarrel with what Senator
22 Danforth has in mind because it is a responsible position,
23 but I quarrel about adopting it as part of the bill. He
24 did raise it, as I indicated yesterday, at the first session.
25 That is why it occurred to me that, so there would not be

1 any argument about cost in 1983, that we defer it. Hopefully
2 during that time there will be -- I assume this committee
3 will meet next year --

4 Senator Danforth. Well, Mr. Chairman, I have for --
5 I don't know -- it must be 2 months now, suggested that we
6 figure out some way to pay for it. I have been waiting for
7 suggestions. I have suggested a luxury tax myself. I would
8 be happy to suggest an increase in the cigarette tax, if
9 anybody would buy that. If you would like to suggest that,
10 fine, and we will vote on it, or in the alternative we could
11 follow the approach that Senator Long outlined yesterday,
12 which was to leave the question open but at least build in
13 some assurance that we are going to start paying for increases
14 in the cost of the Federal Government.

15 I am for the tuition tax credit. I am also for
16 trying to fix the economy of this country, and I thought
17 that that was what we were trying to do last month when we
18 stayed up all night for about three straight nights, trying
19 to put together a package of revenue increases and spending
20 cuts necessary to get the economy moving. Now if we do not
21 do something like this, we are just on the brink of saying,
22 "Well, let's start adding programs and adding spending,"
23 and we are not going to do anything about it.

24 The Chairman. No, I do not view it that way. I
25 mean, I think we made some tough decisions. We raised revenue

1 that was necessary and we have -- you know, if the amendment
2 were broadened, or a statement of intent -- we are about
3 to have some economic recovery and I think that might be
4 a consideration. However, I think we have discussed it long
5 enough, unless somebody would like to -- any more?

6 Senator Bradley. Could the proponents state what
7 the amendment does?

8 The Chairman. Mike, would you?

9 Mr. Stern. The amendment would say that the
10 tuition tax credits would only be effective if there is
11 subsequent legislation which makes them effective, and that
12 legislation also raises revenues or cuts spending other than
13 in education programs, or some combination of both, in an
14 amount that is the equivalent to the estimated revenue losses
15 that are generated by the tuition tax credit, over some
16 reasonable period of time which the committee report would
17 say would be at least 5 years.

18 Therefore, what is necessary is, number one, is
19 that there be a subsequent piece of legislation and that
20 subsequent piece of legislation actually identify that this
21 is the legislation that puts into effect the tuition tax
22 credit --

23 Senator Danforth. That pays for it.

24 Mr. Stern. -- and that it pays for it.

25 Senator Danforth. Also, that it not come out of

1 other education funds.

2 Mr. Stern. That is right, not come out of
3 education.

4 Senator Bradley. The summary, the subsequent
5 legislation identifies that this is the legislation to pay
6 for it. What else?

7 Mr. Stern. The legislation itself has to pay for
8 it by increasing revenues or cutting spending other than
9 in education programs, or some combination of both, and it
10 has to identify that what we are now putting into effect,
11 this is the legislation that pays for it and it will now
12 become effective.

13 The Chairman. Well, we do not have any jurisdiction
14 over other educational pockets, do we?

15 Mr. Stern. Well, I think that could have included
16 things like social security, student benefits. There may
17 be some things that the Finance Committee --

18 Senator Bradley. Mr: Chairman, I know that Mr.
19 Chapeton said and I think that you have concurred that it
20 should be the intent of the committee that this is not done
21 at the expense of other educational programs, and that the
22 committee stand on that so that if there are attempts to
23 cut the education programs, the Finance Committee would stand
24 to resist those.

25 The Chairman. That we have jurisdiction over.

1 I mean, we cannot all run over to some other committee --

2 Senator Bradley. I mean, when this comes up on
3 the floor in the context of various budget fights, if the
4 Finance Committee is on record stating its intent that it
5 does not want to see education programs further reduced,
6 then it seems to me that that would not be binding but it
7 would certainly state the intent, and that is what I thought
8 the purpose of Mr. Chapeton's remark was.

9 Mr. Chapeton. That is correct.

10 The Chairman. I do not quarrel with that, but
11 if somebody wanted to cut something in the education budget
12 we would say, no, we cannot do that because that would --

13 Senator Bradley. That is correct.

14 The Chairman. I cannot agree to that. I mean,
15 as a member I think we are --

16 Senator Bradley. I would suggest that is a broad
17 intent that would be worth supporting.

18 The Chairman. I think that is the problem with
19 the amendment. I think we are in effect saying we are all
20 going to take an oath never to vote to cut any spending.

21 Senator Bradley. No, we did not say that. We
22 said to cut education programs.

23 The Chairman. Well, there might be some places
24 it should be cut.

25 Mr. Stern. I think the concern is that if you

1 do not have an amendment like this, and you do not have
2 anything that pays for it, come next budget or the budget
3 after that, in fact educational programs would be cut. At
4 least, that is some of the concern that is behind it.

5 Senator Danforth. There is a widespread concern
6 among people who are interested in public education, that
7 the tuition tax credit is a way of harming public education.
8 I am for the tuition tax credit because I am for education
9 but I am not for robbing Peter to pay Paul, and it seems
10 to me that the least we could do is to give that assurance
11 in some tangible form, which is what this amendment --

12 Senator Bradley. Mr. Chairman, if I could just
13 add, that concern is based not only on the prospective fear
14 of cuts in education but on the reality of massive cuts in
15 support for public education which have been made in the
16 past year and a half. We are now about to vote for a
17 significant transfer of public resources away from public
18 education to private education. I concur wholly with Senator
19 Danforth, and I merely add, it is not just based on some
20 future fear, it is based on the reality of what has occurred
21 in this Congress.

22 The Chairman. Well, I would say certainly nobody --
23 I do not think anybody would suggest that we are going to
24 proceed to finance this with cuts in other educational funds
25 but I do not think that we can either -- can we say that

1 we cannot in conscience vote to cut Federal spending, whether
2 it is agriculture or education or whatever? I mean, I think
3 that is the problem we have. Maybe it is not a problem.
4 Maybe I do not understand it.

5 Mr. Chapeton. No, I had understood what Senator
6 Bradley was saying as what you have just stated, that is,
7 that it is not a trade-off. We do not view it as a trade-
8 off, this for public education funds, and if the committee
9 report so stated, that would be fine. I do not see how you
10 could lock yourself in to not making further cuts in anything.

11 The Chairman. I know both Senator Long and Senator
12 Danforth support tuition tax credits. All I am suggesting
13 is, we do not want to box ourselves in here so we would have
14 to jump another hurdle every time something is about to go
15 into effect and say, "Oh, you cannot do that because you
16 are going to reduce some other program." Obviously we do
17 not intend to do that. We are not going to take any money
18 out of any funds we have jurisdiction of in education in
19 this committee to pay for tuition tax credits. We may raise
20 revenues. We may make other spending cuts. We could cut
21 Medicare to pay for it. Is that permissible?

22 Senator Moynihan. Mr. Chairman, could I speak
23 to this?

24 I have not said much this morning, and it has been
25 very clear what has been happening this morning and there

1 is not need to characaterize it because we all understand
2 it. However, the one thing that would just be a great shame,
3 if we left this committee room -- no matter what the condition
4 of the legislation or its prospects -- if we left unanswered
5 the proposition that this is an effort to take from public
6 education and give to private.

7 Senator Packwood and I, from the first day we
8 introduced this, said public schools come first. These other
9 schools have rights and have interests, and there is a public
10 interest in helping them.

11 Now this whole thing we are dealing with today
12 and have dealt with for the last 6 years goes back to a specific
13 place and time in our history, and that is in 1964 when
14 President Kennedy's legislation to create Federal aid to
15 education had been effectively halted in the Congress because
16 the representatives of the nongovernment schools said, while
17 they were very much in favor of this legislation, they wished
18 to share in it, simply to share. I was assigned by President
19 Lyndon Johnson to work out an agreement between the parties,
20 and the agreement was incorporated in a plank in the
21 Democratic platform of that year that said we are in favor
22 of aid to all students and, within the limits of the
23 Constitution, to all schools, whereupon the opposition was
24 withdrawn and a united educational community had the Elementary
25 and Secondary Education Act of 1965 on the President's desk

1 on April 11.

2 Then, however, the Government, the executive branch,
3 did not keep its part of the agreement. The aid that was
4 meant to be shared was not shared. Some little bits here,
5 dribbles here, dribbles there, always with an excuse why
6 you could not do more, and indeed at the time there was a
7 small Office of Nongovernment Schools that was created in
8 HEW. At the time Senator Packwood and I introduced our bill,
9 Mr. Califano had just abolished it as having no nominal
10 purpose.

11 It was the failure to keep that commitment -- this
12 is not a measure hostile to public schools in any way, and
13 sooner or late, all the educational community is going to
14 find out as they sit in this room and as they fight each
15 other across the parties and in the streets, practically,
16 that divided they will get nothing. Until you learn to get
17 back together, you will experience what has been going on
18 the last 6 years, but this is not directed against public
19 schools. It was the condition by which public schools received
20 any aid at all from the Federal Government. It was when
21 we came together, and it is just not historical and not fair --
22 I am not suggesting anybody intends that -- it is not fair
23 to those schools that came to the support of public education
24 18 years ago and brought it about, now to suggest in any
25 way that their seeking what they feel to be their own

1 legitimate interest is an effort to impair the interests
2 of the public schools.

3 I am sorry to have spoken strongly but I have been
4 18 years waiting to make that speech.

5 The Chairman. Very good. Thank you.

6 Mr. Reynolds. Mr. Chairman?

7 The Chairman. Mr. Reynolds.

8 Mr. Reynolds. I have another commitment, and I
9 wondered if, with the chairman and the committee's permission,
10 it would be permissible for me to leave?

11 The Chairman. I think anything in your area has
12 probably been addressed. I do not know of any other matters
13 under Justice. I guess this is the last amendment, and we
14 are prepared to vote.

15 Mr. Stern. Did you want to read that language
16 on nondiscrimination?

17 The Chairman. Right. I wanted to make certain
18 on the handicapped that there was a clear understanding,
19 because we have had some of the private schools and some
20 of the Catholic schools indicate that certainly they do not
21 want any discrimination based on handicap --

22 Senator Bradley. Mr. Chairman, before Mr. Reynolds
23 goes, I would like if we could to have some sense about how
24 we translate the general principles that the administration
25 espoused on the Justice Department and antidiscrimination

1 into language. I would ask that, I guess it is the Justice
2 Department that drafts that, share that with me and with
3 my staff in draft form so that we will be sure that the
4 intent of the general principles is actually carried forward,
5 not tha there would be any attempt to change it, bu just
6 so that we do not lose something in the rush.

7 The Chairman. Right.

8 Mr. Reynolds. Absolutely. Certainly. We would
9 share that with everyone.

10 The Chairman. All right, but I want to make
11 certain -- I think I read almost the same language but I think
12 it should be included -- that there would be no finding of
13 discrimination where a handicapped child is denied admission
14 because the school does not have the special facilities or
15 specially qualified personnel needed to deal with that child's
16 handicap. I think that was the understanding, that that
17 would be part of the agreement.

18 Now on the Danforth amendment, are we prepared
19 to vote?

20 Senator Danforth. Yes.

21 The Chairman. The clerk will call the roll.

22 Senator Byrd. Would you indicate what the Danforth
23 amendment is, now? We have talked about several different
24 aspects of it.

25 The Chairman. Mike, would you just run through

1 it one --

2 Senator Byrd. We might save time in this respect:
3 It does not deal with any pledge about other funds for public
4 education; it deals only with the broad principle that you
5 need to raise the taxes or to reduce spending. Is that it?

6 Mr. Stern. Yes. The one connection with education
7 is that in the spending reductions, the spending reductions
8 could not be in the area of education.

9 Senator Byrd. Could not be in the area --

10 Mr. Stern. That is correct. In other words, you
11 could not have a bill -- this would probably not be a Finance
12 Committee bill anyway -- you could not have a bill which
13 cuts spending for education and say that is where the funds
14 come from to pay for the tuition tax credit. That is the
15 one restriction.

16 The Chairman. Could I follow that up?

17 Senator Byrd. Yes.

18 The Chairman. Let's say next year that we do not
19 do anything, and a bill comes to the floor that reduces
20 education. Now does that delay tuition tax credits?

21 Mr. Stern. Well, under this amendment the tuition
22 tax credit would not go into effect until the Congress passes
23 subsequent legislation that puts it into effect, and that
24 subsequent legislation has to be a piece of legislation that
25 either raises taxes or cuts spending other than for education.

1 Therefore, you could not presumably offer a floor
2 amendment to a bill that only cut education funds and say
3 this is the bill that is --

4 The Chairman. Oh, I understand that. I do not
5 want to do that but I just wanted to make certain it was
6 not the reverse, that if somebody got up and took a dollar
7 out of some educational fund it would delay tax credits another
8 year.

9 Okay.

10 The Clerk. Mr. Packwood?

11 The Chairman. No.

12 The Clerk. Mr. Roth?

13 Senator Roth. No.

14 The Clerk. Mr. Danforth?

15 Senator Danforth. Aye.

16 The Clerk. Mr. Chafee?

17 Senator Chafee. Aye.

18 The Clerk. Mr. Heinz?

19 [No response.]

20 The Clerk. Mr. Wallop?

21 The Chairman. No.

22 The Clerk. Mr. Durenberger?

23 Senator Durenberger. No.

24 The Clerk. Mr. Armstrong?

25 [No response.]

1 The Clerk. Mr. Symms?
2 [No response.]
3 The Clerk. Mr. Grassley?
4 Senator Grassley. No.
5 The Clerk. Mr. Long?
6 [No response.]
7 The Clerk. Mr. Byrd?
8 Senator Byrd. Aye.
9 The Clerk. Mr. Bentsen?
10 [No response.]
11 The Clerk. Mr. Matsunaga?
12 [No response.]
13 The Clerk. Mr. Moynihan?
14 Senator Moynihan. No.
15 The Clerk. Mr. Baucus?
16 [No response.]
17 The Clerk. Mr. Boren?
18 [No response.]
19 The Clerk. Mr. Bradley?
20 Senator Bradley. Aye.
21 The Clerk. Mr. Mitchell?
22 Senator Mitchell. Aye.
23 The Clerk. Mr. Chairman?
24 The Chairman. No.
25 Senator Long recorded in the affirmative.

1 The vote is 8 nays and 6 yeas. The amendment is
2 not agreed to.

3 Now the vote occurs --

4 Senator Bradley. Mr. Chairman, I had an amendment
5 that would make the intent --

6 The Chairman. All right. Is that drafted?

7 Senator Bradley. No. The amendment is that it
8 is stated it is the intent of the Senate Finance Committee
9 that in Fiscal Years 1983 and 1984, there will be no further
10 cuts in aid for public education.

11 Senator Byrd. Does that mean you --

12 Senator Bradley. It is a statement of intent that
13 there would be no further cuts.

14 The Chairman. Well, we do not even have jurisdiction
15 of most of that. I do not know --

16 Senator Bradley. That is why it is a statement
17 of intent instead of a provision that could actually determine
18 the dollar figure.

19 Senator Durenberger. Mr. Chairman, I apologize
20 to all of you for not having been part of the discussion
21 today. I was chairing what turned out to be a 3-hour hearing.

22 My sense of what we just voted on as far as Jack
23 Danforth's proposal is concerned and my sense of this, of
24 course, is to react to the allegation that somehow or other
25 the authority for tuition tax credits is taking something

1 away from public education. I do not believe that, and I
2 hope that nobody else around here does.

3 What bothers me about what our colleague from New
4 Jersey has proposed -- and this is speaking with the chairman
5 of the Intergovernmental Relations Subcommittee of Bill Roth's
6 committee's hat on, in terms of trying to redesign this
7 Federal system of ours so that it can more adequately reflect
8 the needs of the people of this country -- that very general
9 statement of no more Federal cuts or cuts in Federal aid
10 to education is open to an awful lot of misinterpretation.

11 There are proposals around, as we look at the new
12 federalism, for us at the Federal level to decrease specific
13 support for specific parts of elementary and secondary
14 education but to strengthen other areas, for example, title
15 1, also for us to free up resources that presently we are
16 utilizing for general obligations of the Federal Government
17 so that they can be utilized by State governments and by
18 local governments where the traditional responsibility for
19 raising resources for elementary and secondary education
20 lies.

21 Therefore, because your statement is so general
22 and it goes beyond what we might do in the normal appropriation
23 sense to perhaps some kind of a rearrangement of resources
24 in this country so that we can shore up public education
25 at some other level, I would ask you to withdraw it, Bill,

1 because obviously it leads to an awful lot of misinterpretation
2 here. If we vote on it, we want to know exactly what we
3 are voting on and what we believe in. However, I just think
4 it is very inappropriate to the discussion and inappropriate
5 to this legislation that we are acting on.

6 Senator Byrd. Mr. Chairman?

7 The Chairman. Senator Byrd.

8 Senator Byrd. I certainly agree with the Senator
9 from Minnesota. If spending is to be controlled, and it
10 seems to me that sooner or later it has to be controlled,
11 you may have to touch every program in the Federal budget.
12 Then I do not know how you are going to say we are going
13 to single out this program or another program or another
14 program and not touch that, when it may very well be necessary
15 to touch all programs at one time or another. It may be
16 necessary to go to an across-the-board reduction in spending.
17 It seems to me it would be unwise for this committee to adopt
18 the proposal of the Senator from New Jersey.

19 Senator Bradley. Mr. Chairman, might I say in
20 response both to Senator Durenberger and Senator Byrd, that
21 if what you are referring to is some variation of the new
22 federalism, I think that we will be debating that for a long
23 while. Second, this is only a statement of intent, and if
24 you feel that aid to public education, Federal aid to education
25 in its present construct, handicapped aid, special education,

1 title 1, that those have already been cut too much, as I
2 do, then you would say, "Enough is enough; no more." That
3 is what this amendment says, and I think that it is important
4 that the Finance Committee go on record stating this. With
5 respect, I would not agree to withdraw the amendment.

6 The Chairman. Well, let's vote on it.

7 Senator Chafee. Mr. Chairman, I think it is an
8 unfortunate amendment. No one can question my support for
9 public education, but who knows what is going to happen in
10 the next 2 years? The revenues may fall off to nothing.
11 We may be in a terrible predicament around here, even worse
12 than we are now, and it may well be that we would have to
13 take cuts in programs none of us wanted to make cuts in.
14 To lock ourselves in, though some declaration of intent,
15 does not seem to me to be wise.

16 Senator Bradley. If there was an emergency, I
17 mean, a lot of people voted for a balanced budget amendment.
18 You had 60 votes. If there is a catastrophe you have to
19 get 60 votes. You felt confident enough, when there is
20 a downturn and a catastrophe, that you could get 60 votes.
21 This is just a statement of intent, and when the catastrophe
22 occurs you certainly ought to be able to justify why you
23 had to cut every program, because the catastrophe will be
24 so self-evident. In the interim, it simply says that we
25 have gone far enough in cuts to public education, Federal

1 aid to education.

2 The Chairman. Well, my problem is, we do not have
3 any jurisdiction. I would like to add agriculture to that,
4 and maybe defense and other things we do not have any
5 jurisdiction over. You know, if we are not going to cut
6 any spending we can pass a resolution. I know it is not
7 intended that way, but I would like to get the bill out of
8 the committee today, and if we could vote on this it would
9 be helpful.

10 The Clerk. Mr. Packwood?

11 The Chairman. No.

12 Senator Roth. Mr. Chairman, I think it puts
13 everyone in a very difficult position. I think most of us
14 are in agreement that no way do we want this legislation
15 to represent any taking away from funds for public education,
16 but I think it is a highly inappropriate proposal and I would
17 move to table it.

18 Senator Bradley. We have already had the vote
19 called. The chairman already called the roll. He said,
20 "The roll will be called," and if you were going to table
21 you should have tabled prior. He called Mr. Packwood and
22 you already voted Mr. Packwood. The roll call is in order.

23 The Chairman. I voted Mr. Packwood, yes. I could
24 withdraw the vote but he is not here. I cannot check with
25 him.

1 The Clerk. Mr. Roth?
2 Senator Roth. No.
3 The Clerk. Mr. Danforth?
4 Senator Danforth. Aye.
5 The Clerk. Mr. Chafee?
6 Senator Chafee. No.
7 The Clerk. Mr. Heinz?
8 [No response.]
9 The Clerk. Mr. Wallop?
10 The Chairman. No.
11 The Clerk. Mr. Durenberger?
12 Senator Durenberger. No.
13 The Clerk. Mr. Armstrong?
14 [No response.]
15 The Clerk. Mr. Symms?
16 [No response.]
17 The Clerk. Mr. Grassley?
18 Senator Grassley. No.
19 The Clerk. Mr. Long?
20 [No response.]
21 The Clerk. Mr. Byrd?
22 Senator Byrd. No.
23 The Clerk. Mr. Bentsen?
24 [No response.]
25 The Clerk. Mr. Matsunaga?

1 [No response.]

2 The Clerk. Mr. Moynihan?

3 Senator Moynihan. Aye.

4 The Clerk. Mr. Baucus?

5 [No response.]

6 The Clerk. Mr. Boren?

7 [No response.]

8 The Clerk. Mr. Bradley?

9 Senator Bradley. Aye.

10 The Clerk. Mr. Mitchell?

11 Senator Mitchell. Aye.

12 The Clerk. Mr. Chairman?

13 The Chairman. No.

14 Chafee votes aye.

15 The yeas are 5, the nays are 7. The amendment
16 is not agreed to.

17 Senator Mitchell?

18 Senator Mitchell. Mr. Chairman, I had a brief
19 statement I wanted to make explaining my vote on the bill
20 itself. Before I did, I would like to get, if we finally
21 could, the most current and best available revenue loss
22 estimates by the Treasury for this legislation that we are
23 about to vote on.

24 Mr. Chapeton. I think we will have to amend it
25 by the Joint Committee estimate on Senator Grassley's

1 amendment.

2 Senator Mitchell. I think it is important for
3 the committee members to know just how much revenue loss
4 is involved because a great deal of the discussion in the
5 last 2 days has revolved around how much revenue is being
6 lost, how to fund it, how to make it up.

7 The Chairman. Well, there is none in 1983 and
8 there is very little in 1984.

9 Mr. Brockway. Senator, the revenue cost of the
10 bill as amended would be no revenue loss in Fiscal 1983,
11 \$229 million in 1984, \$491 million in 1985, \$703 million
12 in 1986, \$726 million in 1987. That is as a nonrefundable
13 credit.

14 Senator Mitchell. Then after that it would be
15 in full effect, so you would presume that the figure would
16 be somewhere in that range?

17 Mr. Brockway. Yes, sir. With the committee
18 amendment requiring refundability you would be increasing
19 it. I think in 1984 it is up by \$8 million, and it is \$22
20 million --

21 Senator Mitchell. No, I am mostly concerned with
22 when it goes fully into effect.

23 Mr. Brockway. Well, as the committee is reporting
24 it out, you are reporting it as a nonrefundable amendment
25 but then you also have the committee amendment. If you assume

1 that was adopted, then it would be \$237 million in 1984,
2 \$513 million in 1985, \$736 million in 1986, and \$759 million
3 in 1987.

4 Senator Mitchell. May I just say, Mr. Chairman,
5 without belaboring the point, I am highly skeptical of the
6 revenue estimates. I think they are seriously understated.
7 Many estimates are that there are in excess of 5 million
8 children in private and parochial schools who would qualify
9 for this. It seems most unlikely that these estimates are
10 realistic, but I do not mean that to belabor the point.

11 I would, if I may, Mr. Chairman, just make a very
12 brief statement of my opposition to the bill. I am going
13 to vote against it. I will do so with considerable reluctance
14 because I myself attended parochial schools, and I believe
15 they and other private schools contribute significantly to
16 the diversity and quality of education in our society.

17 The reason for making this statement is, this has
18 been presented and it is really being pursued here as a way
19 of providing needed tax relief for low- and middle-income
20 Americans who choose to send their children to private
21 institutions. Indeed, much of the discussion yesterday and
22 today has revolved around where the income limit should be
23 set and whether the credit should be refundable.

24 I just want to make clear that while I oppose
25 tuition tax credits, I strongly favor tax relief for middle-

1 income Americans. Four times in the past year I have offered
2 an amendment to the 1981 tax bill to change the composition
3 of that 3-year tax reduction to provide a greater portion
4 of the reduction to low- and middle-income taxpayers.
5 Unfortunately, each time it was rejected by a majority of
6 this committee and the Senate.

7 I want to point out that that proposal would have
8 made available to all middle-income taxpayers some tax
9 reduction, not just those who send their children to private
10 school. Of course, those who choose to send children to
11 private schools use their funds for that purpose.

12 I also would point out that the proposal that I
13 made that was rejected by the committee would not have cost
14 an additional cent to the Treasury because the amount of
15 the tax reduction would have remained the same; only the
16 composition would have changed, and those making higher
17 incomes in our society would have had a little less relief.

18 Reference has been made repeatedly to the enormous
19 and growing budget deficit. Almost daily now the President
20 issues a statement calling the Congress budget busters and
21 attacking us for adding new programs at a time when we cannot
22 pay for those that are in effect. I cannot match Senator
23 Danforth's eloquence in pointing out the problem there.

24 Now here is the administration asking Congress
25 to vote to, in effect, create a new program to make the deficit

1 even larger, and I think the American people are entitled
2 to ask, "Who today are the budget busters?"

3 Finally, I just want to say that adoption of the
4 amendment which I have proposed, which would have given tax
5 relief to every family in America making less than \$50,000,
6 additional tax relief, would have provided what this bill
7 says it will provide, not just to some Americans but to all
8 Americans, and would have done so and kept us out of the
9 thicket of the constitutional separation of church and State,
10 and would have provided necessary tax relief.

11 I believe, Mr. Chairman, that I do strongly favor
12 tax relief for middle-income Americans. I do not believe
13 this is the appropriate vehicle to accomplish that purpose.

14 Senator Danforth. Mr. Chairman?

15 The Chairman. Senator Danforth.

16 Senator Danforth. Mr. Chairman, I will vote to
17 report the bill out because of my longstanding support for
18 the tuition tax credit program. I will not repeat my prior
19 comments about the budgetary implications.

20 I would ask the administration one question: Mr.
21 Chapeton, the President used the term "budget busting bill"
22 to refer to the supplementary appropriations bill which he
23 vetoed. Is it the position of the administration that this
24 is a budget busting bill?

25 Mr. Chapeton. No, Senator Danforth, it is not

1 position of the administration that this is a budget busting
2 bill.

3 Senator Durenberger. Mr. Chairman, on that note
4 may I just say that I disagree with that statement, at least
5 in part. I mean, the last one that was a so-called budget
6 busting bill was actually a budget saving bill, and I am
7 just going to take 30 seconds to reflect my concern for what
8 we are doing.

9 I have been a supporter of the concept of tuition
10 tax credits since before I ever came to the United States
11 Senate. I think the process we are going through this year
12 is disastrous to tuition tax credits if you believe in the
13 concept. With all due respect to the authors of this bill,
14 to the author of the President's bill, and to the President
15 of the United States, I think we are doing a disservice to
16 the concept of tuition tax credits.

17 I will support moving the bill out of this committee.
18 If it ever gets to the floor of the Senate, I will have a
19 lot more to say about the process, about the future and the
20 necessity in this Nation of public education, and the guarantees
21 of public education. I think these credits ought to be
22 applied across the board. I think there ought to be education
23 credits. I think the needs of education in this country
24 are too great to be capsulized in a bill which is being pushed
25 through this Congress in the last 2 weeks of this session.

1 I have not been comfortable, Mr. Chairman, and
2 I might as well say this publicly, about this whole process,
3 as you well know and I have articulated very often, because
4 there is going to be great confusion out there on the part
5 of the American people about what this Federal Government's
6 role is in the future of public education and in the future
7 of private education, in which I believe a great deal, as
8 I do in public education. However, the misconceptions are
9 incredible and the politics are incredible, and that is not
10 the way to make good legislation. This is not the best piece
11 of legislation we could report out. I have voted against
12 amendments that are going to confuse an awful lot of people
13 out there, but I think the bill will itself. I will support
14 it to get it out of this committee.

15 The Chairman. Senator Chafee?

16 Senator Chafee. Mr. Chairman, I find it astonishing
17 that, at a time when the budget is running at a deficit of
18 \$150 billion, when we have spent so much effort on this committee
19 going through extremely painful cuts in the budget as we
20 did, and raising taxes as we did, that suddenly we at this
21 time rush forward and embrace a new program, the projections
22 of which are obviously low. How Mr. Chapeton can come forward
23 and with all candor state that this program is going to cost
24 only the sums that he indicates, I think runs contrary to
25 all the evidence that would naturally flow from the number

1 studnets that are currently attending private schools, and
2 I regret greatly that those proponents of this measure have
3 made such effort to bring it forward before us now because
4 plainly we cannot afford it.

5 Secondly, I would like to touch on the problem
6 of the private schools. The suggestion is that the private
7 schools are in great difficulty, that because of the high
8 cost they are unable to accommodate the number of children
9 that they once were. The statistics do not show that.

10 Sure, the number of students attending school
11 totally has declined dramatically, but the number of children
12 attending private schools has actually increased in the last
13 10 years. In 1970 less than 20 percent of the school
14 population attended private schools. In 1980, 10 years later,
15 10.9 percent of the eligible children are attending private
16 schools, so that is a 10 percent increase in 10 years.

17 Finally, Mr. Chairman, I believe that this program
18 is damaging to education. It is damaging to public education,
19 obviously, because what will occur -- and it is very apparent
20 what will occur because we know now who attend private
21 schools -- there will be a further advancement of the so-
22 called skimming process. That is, those who are fit, those
23 who can speak good English, those who are not minorities,
24 those who are not poor, will further leave the public school
25 system, and so the public school system will be left with

1 the handicapped. We just went through this discussion today.
2 The private school representatives made it very clear they
3 are not going to spend any money to take on handicapped
4 children. They do not want that burden, and so that burden
5 will be left, under the legislation that we pass in this
6 Congress, on the public school system.

7 The immigrants, where do they go? Are the private
8 schools going to accept them? Of course, they are not, and
9 the statistics are very clear on the minorities. The
10 minorities are in the public school system, not in the private
11 school system.

12 Is this a program designed to help the poor? When
13 you have it going up to \$50,000 and you can get the credit,
14 obviously not. Furthermore, even under this program 50
15 percent of the tuition has to be paid by the student himself,
16 so what we are going to do is further the advancement of
17 two different school systems in the United States, one for
18 the bright, that includes the wealthy, the nonhandicapped,
19 the able, and the balance will be in the public school system.
20 I just do not think that is good for education.

21 The Chairman. Are there others? Senator Byrd?

22 Senator Byrd. Mr. Chairman, we have in our country
23 a system of public education which is vitally important.
24 I do not feel that the taxpayers can help to finance two
25 systems of education. I feel that I must vote against this

1 proposal.

2 The Chairman. Well, are there --

3 Mr. Chapeton. Mr. Chairman, if I could just respond
4 very briefly, particularly to Senator Chafee's point, the
5 revenue estimates, our estimates, agree with the Joint
6 Committee estimates. They are based on the numbers of students
7 in private schools, along the line that Senator Mitchell
8 indicated. We are looking at some increase in enrollment
9 after tuition tax credits are on the books. We are talking
10 about some 4.5 million private school students at that time
11 eligible for tuition tax credits.

12 As I think has been made clear in the past, and
13 I did not know that there was any reason to elaborate on
14 this, there is always concern about a program that increases
15 Federal outlays, and in this case decreases Federal receipts.
16 We have attempted to keep the cost as low as possible, and
17 the committee has acted much, much further in that regard
18 so that over the next 3 years the cost of this program --
19 that is, the 3-year period we have been focusing on -- the
20 cost of the program without refundability is some \$700 million,
21 no cost in Fiscal Year 1983. The budgetary needs will have
22 to be considered by this committee and the other committees
23 of Congress next year. As you well know, the President simply
24 feels this is a program that is essential for tax relief
25 of parents that are bearing double cost of education.

1 Senator Byrd. May I ask Mr. Chapeton, I did not
2 understand what you said about the enrollment in regard to --

3 Mr. Chapeton. Private school enrollment after
4 enactment of tuition tax credit in secondary and elementary
5 schools, we are estimating at 4.5 million students.

6 Senator Byrd. You are estimating an increase?

7 Mr. Chapeton. No, that would be the enrollment,
8 which would be slightly higher than it would be absent the
9 presence of tuition tax credits.

10 Senator Byrd. Therefore, this would increase the
11 enrollment for the private schools?

12 Mr. Chapeton. Slightly, yes, sir.

13 Senator Byrd. Now of course you were not speaking
14 of secondary education.

15 Mr. Chapeton. I am speaking of elementary and
16 secondary.

17 Senator Byrd. Elementary and secondary education,
18 but you were not speaking of college education.

19 Mr. Chapeton. No, we are not.

20 Senator Byrd. That represents, as I see it, an
21 entirely different problem in regard to tuition tax credits.
22 I favor that, but we do not have a public college system.

23 The Chairman. Mr. Jones, do you have anything
24 to add? Anybody else?

25 [No response.]

1 The Chairman. Well, let me say I want to thank
2 all members and members of their staffs and representatives
3 of the administration.

4 As I understand, have all the amendments been finally
5 decided? Are there still amendments that are in doubt?

6 Senator Bradley. Mr. Chairman, will the roll call
7 stay open until the end of the day, as is the usual practice?

8 Mr. Lighthizer. Mr. Chairman, the usual practice
9 is, once you have the vote on final passage, all the votes
10 close at that point. All the votes are closed as of the
11 time of final passage. You cannot have the bill changing
12 form after you have reported out.

13 The Chairman. Senator Bentsen has just advised
14 he wants to be recorded in the negative on the Grassley
15 amendment.

16 The final passage vote will remain open all day.
17 Was that your inquiry?

18 Senator Bradley. No; my inquiry was on the various
19 amendments. If they close at the time of final passage, fine.
20 Then the question is, final passage stays open for the rest
21 of the day?

22 The Chairman. I think otherwise we would spend
23 all day running around trying to change votes on amendments.
24 I would just as soon have the final passage vote stay open
25 but the others close.

1 Senator Byrd. Well, the others would have to be
2 closed, would they not, because you would not know how to
3 vote on final passage without the amendments.

4 The Chairman. Yes, that is right. Sometimes there
5 are changes made when it does not change the vote.

6 All right. Is there a final vote on the Grassley
7 amendment?

8 Mr. Lighthizer. That was defeated by a tie vote.

9 Senator Grassley. The final vote was announced
10 before.

11 The Chairman. We permit absent members to record
12 their votes.

13 Senator Grassley. The agreement you and I had,
14 and I consider this a gentleman's agreement -- we played
15 around like this on that other vote -- I was offering this
16 as a case in which that one -- you left the vote on the
17 amendments spread out, and I waited until that one was done
18 to offer this one. You announced that this one carried,
19 7 to 2.

20 The Chairman. Seven to four, I think it was, but
21 I announced as I did in others -- I don't know, if absent
22 members are not here, we can not record them, but if that
23 is going to be the policy, Senator Durenberger was recorded
24 on that vote and he was not present at the time. I am not
25 changing the rules.

1 Mr. Lighthizer. The votes have always remained
2 open, Senator, until final passage, and we have had people
3 vote, absentees come in and vote after the vote was originally
4 taken, and in this case it changed the outcome.

5 Senator Byrd. What was the vote?

6 Mr. Lighthizer. That was on Senator Grassley's
7 amendment.

8 Senator Byrd. However, what was the vote?

9 Mr. Lighthizer. It is 7 to 7.

10 Senator Grassley. Okay. Are these votes that
11 have been added since? Has anybody changed their vote?

12 Mr. Lighthizer. There have been no changes since
13 the original vote but there have been votes that were added.

14 Senator Grassley. Well, I suspicion that if I
15 had had my staff running around trying to find people to
16 vote now so the administration could be satisfied on this,
17 I could have come out ahead, but I did not do that.

18 The Chairman. If there is any doubt in the Senator's
19 mind, I will just withhold my vote and then that will prevail,
20 the Grassley amendment will prevail.

21 Senator Roth. Mr. Chairman, on the last Bradley
22 amendment there as an indication of my desire that this program
23 should not be used as a reduction in public education, I
24 would like to be recorded as aye.

25 The Chairman. Let's vote on final passage before

1 the whole thing falls apart.

2 Senator Bradley: Mr. Chairman, what is the vote
3 now?

4 Mr. Lighthizer. Well, then, that amendment is
5 now agreed to.

6 The Chairman. What is the vote on that amendment?

7 Mr. Lighthizer. Seven ayes, six nays.

8 Senator Byrd. What is the vote?

9 Mr. Lighthizer. It is 7 to 6 that Senator Bradley's
10 amendment, which was essentially a resolution that the
11 committee does not want any more cuts in education --

12 Senator Byrd. Does it prevail or not prevail?

13 Mr. Lighthizer. It prevails.

14 Senator Byrd. Now the committee is in the position
15 of saying we are beginning now to set up sacred cows. What
16 about health programs? They are vitally important to the
17 American people. What about the cancer program? Senator
18 Dole has just mentioned agriculture. Somebody else mentioned
19 defense. All this suggests to me is that Congress is back
20 to the old problem of "business as usual," more and more
21 spending, we are not going to cut spending anywhere. I think
22 this whole thing is getting to be a charade.

23 I have said all along, and I said on the floor
24 the other day, and this convinces me all the more, that
25 Congress has no intention of cutting spending. Spending

1 is totally out of control and no one wants to do anything
2 about it. Today what is happening in this committee
3 dramatizes all the more that spending is out of control and
4 will continue out of control because everybody has his own
5 pet project.

6 The Chairman. Well, I am not prepared to have
7 final passage with that amendment adopted, so we will just
8 recess the hearings until we dispose of that amendment.

9 Senator Danforth. The Bradley amendment?

10 The Chairman. Yes. The committee will stand in
11 recess until two o'clock.

12 [Whereupon the committee recessed, to reconvene
13 at 2:00 p.m. the same day.]
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AFTERNOON SESSION 2:30 P.M.

1
2 The Chairman. Now as I understand, Mr. Lighthizer,
3 all the amendments have been acted upon but when we recessed,
4 I suggested that we try to find some resolution of the Bradley
5 amendment. Could you announce the present vote on that
6 amendment?

7 Mr. Lighthizer. That is 9 yeas and 8 nays at this
8 point, Mr. Chairman.

9 Senator Roth. Mr. Chairman?

10 The Chairman. Senator Roth.

11 Senator Roth. I would like to withdraw my vote
12 in favor of it but I would like to have the opportunity to
13 explain why. I want to vote present.

14 I happen to have been a long, strong supporter
15 of tuition tax credits. I have been a principle sponsor
16 of this legislation beginning, of course, many years ago
17 with my efforts to get a college tuition tax credit. I
18 think it is critically important that this legislation be
19 reported out this year so that the Senate has a chance to
20 act upon it.

21 Now let's call this amendment what it is: It is
22 a killer amendment, and I am not willing to see this concept
23 dies because of an amendment in my judgment, Mr. Chairman,
24 that is not even germane. As you brought out in your own
25 statement, this committee has no authority of any type to

1 try to restrict votes on education by this device.

2 I want to say that I am also a strong supporter
3 of public education, and as I said earlier in announcing
4 my vote, I want to make it very clear that I do not look
5 upon this legislation as being any reason for reducing public
6 education. I reserve the right, when public education comes
7 up, to vote what I think is correct at that time and not
8 attempt to influence it by an improper amendment at this
9 time.

10 Therefore, in order to ensure that the Senate has
11 a chance to act on it, I withdraw my vote and will vote present.

12 The Chairman. Are there other amendments?

13 Senator Byrd. Yes, I have an amendment. I present
14 the Bradley amendment giving the intent on education, and
15 I included in that the National Health Institute, cancer
16 research, and veterans benefits.

17 The Chairman. Well, we just defeated it.

18 Senator Byrd. I know we defeated it.

19 The Chairman. Oh, I see. In other words, you
20 would amend the amendment?

21 Senator Byrd. No, the amendment has died. This
22 is a new amendment.

23 The Chairman. That we should not reduce --

24 Senator Byrd. We should not reduce education,
25 the National Health Institute, cancer research, or veterans

1 benefits. If anyone wants to throw in defense, that suits
2 me.

3 The Chairman. All right. I think some of that
4 has great merit but I am having trouble with the same argument
5 we had before: We do not have jurisdiction of any of those
6 things, and I would hope that you would be willing -- do
7 you want a roll call?

8 Senator Byrd. Well, I am going to vote against
9 it.

10 Senator Chafee. Mr. Chairman, where are we here?

11 [Laughter.]

12 The Chairman. Well, we are about --

13 Senator Chafee. What is the status of the Bradley
14 amendment. Was that defeated?

15 The Chairman. No, it was a tie.

16 Senator Chafee. Therefore, it did not prevail.

17 The Chairman. Not yet. I mean, no.

18 Senator Chafee. The problem is that people, further
19 people can come in and vote. Is that the suggestion when
20 you said, "Not yet"?

21 The Chairman. I mean, if there is somebody not
22 recorded certainly that is an option they have until we have
23 final passage. It has always been an option in this committee
24 up until final passage. At least, I think that is right.

25 Senator Roth. However, I would point out, Mr.

1 Chairman, that we are in the awkward situation that the Senator
2 from Virginia has now offered a new amendment on the basis
3 that the Senator from New Jersey was not accepted. I
4 understand, and have great respect for the Senator from
5 Virginia, but it really seems to me that this kind of amendment
6 is inappropriate, and at the proper time I would like to
7 make a motion to table.

8 Senator Byrd. Well, I might say that the amendment
9 offered by the Senator from New Jersey was not supported
10 by the Senator from Virginia. The amendment which the Senator
11 from Virginia may offer is not going to be supported by the
12 Senator from Virginia. If a motion is made to table, I shall
13 vote to table, but so long as we are not willing to face
14 these issues around here, all we want to do is spend more
15 and more money and not be willing to tie our hands in any
16 reductions, I am not very much inclined to that.

17 Senator Chafee. Well, Mr. Chairman, could I suggest
18 to the Senator from Virginia that since the Bradley amendment
19 has not prevailed, I do not think it is quite necessary for
20 the Senator from Virginia to make his point, is it, with
21 this further amendment?

22 The Chairman. Well, he is willing to vote on it.
23 Would a voice vote be satisfactory?

24 Senator Byrd. I withdraw the amendment.

25 The Chairman. All right. Are there other amendments?

1 We are waiting for three other members to make a quorum so
2 we can vote on the bill, but I would hope that you would
3 not draft any amendments while we are waiting.

4 [Laughter.]

5 Senator Roth. Could I talk about Roth-Kemp?

6 [Laughter.]

7 The Chairman. It is all right if you talk about
8 the Roth part of it, yes.

9 Senator Moynihan. Mr. Chairman?

10 The Chairman. Senator Moynihan.

11 Senator Moynihan. I wonder if we could not begin
12 the roll call?

13 The Chairman. Bob, do we get in any trouble with
14 the rules if we start the roll call?

15 Mr. Lighthizer. Well, some committees have had
16 what they call a rolling quorum, but the Finance Committee
17 has tended to require, as the Senate rules appear to, a live
18 quorum.

19 The Chairman. I want to do it right because this
20 is fragile enough as it is.

21 Senator Moynihan. Mr. Chairman, it has been my
22 understanding that we follow the rule of reason here in the
23 Finance Committee, and we might reasonably begin.

24 Senator Byrd. Is it not correct that a point of
25 order could be made on the floor?

1 The Chairman. Well, now we have another problem
2 with the Bradley amendment. Senator Boren has now called
3 in from Oklahoma, voting for the Bradley amendment, so now
4 we are back to 9 to 8 again.

5 Senator Byrd. Well, if that has opened up, I will
6 have to open up my amendment again.

7 [Laughter.]

8 The Chairman. Was that a collect call that came
9 in?

10 [Laughter.]

11 The Chairman. We are waiting for a quorum. We
12 need two additional members.

13 Mr. Lighthizer. I believe Senator Danforth is
14 on his way and Senator Mitchell is also on his way.

15 I think we are still trying to get some resolution
16 of the Bradley amendment, is that correct?

17 Mr. Lighthizer. That is correct, Mr. Chairman.

18 The Chairman. The vote is?

19 Mr. Lighthizer. Nine yeas, eight nays.

20 Senator Durenberger. Mr. Chairman, how am I recorded
21 on the innocuous, nongermane Bradley amendment?

22 [Laughter.]

23 Mr. Lighthizer. Senator, you are recorded as a
24 yea.

25 The Chairman. In the affirmative.

1 Senator Durenberger. Mr. Chairman, I would change
2 my vote to pass, to not be recorded.

3 The Chairman. That makes the vote --

4 Mr. Lighthizer. Eight to eight, so that the amendment
5 would go down by a tie vote, Mr. Chairman.

6 The Chairman. Are we prepared, then, for final
7 passage?

8 Mr. Lighthizer. Yes, Mr. Chairman.

9 The Chairman. The clerk will call the roll.

10 The Clerk. Mr. Packwood?

11 Senator Packwood. Aye.

12 The Clerk. Mr. Roth?

13 Senator Roth. Aye.

14 The Clerk. Mr. Danforth?

15 [No response.]

16 The Clerk. Mr. Chafee.

17 Senator Chafee. No.

18 The Clerk. Mr. Heinz?

19 [No response.]

20 The Clerk. Mr. Wallop?

21 The Chairman. Aye.

22 The Clerk. Mr. Durenberger?

23 Senator Durenberger. Aye.

24 The Clerk. Mr. Armstrong?

25 Senator Armstrong. Aye.

1 The Clerk. Mr. Symms?

2 The Chairman. Aye.

3 The Clerk. Mr. Grassley?

4 Senator Grassley. Aye.

5 The Clerk. Mr. Long?

6 [No response.]

7 The Clerk. Mr. Byrd?

8 Senator Byrd. No.

9 The Clerk. Mr. Bentsen?

10 [No response.]

11 The Clerk. Mr. Matsunaga?

12 The Chairman. No, by proxy.

13 The Clerk. Mr. Moynihan?

14 Senator Moynihan. Aye.

15 The Clerk. Mr. Baucus?

16 [No response.]

17 The Clerk. Mr. Boren?

18 Senator Byrd. No, by proxy.

19 The Clerk. Mr. Bradley?

20 Senator Bradley. Aye.

21 The Clerk. Mr. Mitchell?

22 Senator Mitchell. No.

23 The Clerk. Mr. Chairman?

24 The Chairman. Mr. Danforth votes aye, the chairman
25 votes aye, Bentsen votes no. Senator Long said this morning

1 that he wanted to vote like I did. Mike, do you have any
2 instructions?

3 Mr. Stern. I do not. I believe he is for the
4 bill but I do not know.

5 The Chairman. On this vote the yeas are 11, the
6 nays are 6.

7 Mr. Stern. I apologize, Mr. Chairman. Yes, he
8 does authorize you to vote his proxy in favor.

9 The Chairman. Right. I thought he wanted to be
10 in the affirmative. That would make 12 yeas, 6 nays. The
11 bill is agreed to.

12 Now do we have a vehicle?

13 Mr. Lighthizer. Mr. Chairman, our recommendation
14 is that we put it on the mental health bill, the special
15 interest bill that Senator Armstrong --

16 The Chairman. The Jefferson County --

17 Mr. Lighthizer. The Jefferson County Mental Health
18 bill.

19 The Chairman. Any objection? If not --

20 Mr. Chafee. Oh, I would object, sure, but I do
21 not have the votes. Presumably you do not need unanimous
22 consent, do you?

23 The Chairman. No, I do not.

24 Senator Chafee. Okay. Never mind.

25 Mr. Lighthizer. That is H. 1635, Mr. Chairman,

1 and can the staff have technical drafting authority?

2 The Chairman. Yes. Without objection, the staff
3 will have technical drafting authority. There have been
4 some requests, from I think Senator Chafee, Senator Bradley,
5 and others, that as some of that language is prepared that
6 they would like to review it.

7 Are there any other administration concerns?

8 Mr. Chapeton. No, sir.

9 The Chairman. Any other members?

10 [No response.]

11 The Chairman. If not, I want to thank the members
12 for their patience and, again, the administration and members
13 of our staff.

14 Anybody want any time for minority views?

15 Senator Chafee. Yes.

16 The Chairman. All right. We will follow the
17 customary procedure on the committee report.

18 Thank you. We will stand in recess until the
19 Caribbean Basin.

20 [Whereupon, at 2:50 p.m., the committee recessed,
21 to reconvene at the call of the Chair.]

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