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HEARINGS

Before the

COMMITTEE ON FINANCE

UNITED STATES SENATE

MARKUP

Washington, D.C.

May 18, 1983



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WEDNESDAY, MAY 18, 1983

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United States Senate
Committee on Finance
Washington, D.C.

The committee met, pursuant to notice, at 10:50 a.m., in room 215, Dirksen Senate Office Building, the Honorable Robert Dole (Chairman of the full committee) presiding.

Present: Senators Dole (Chairman), Grassley, Symms, Durenberger, Danforth, Chafee, Packwood, Long, Moynihan, Boren, Bradley and Pryor.

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Chairman Dole: It is my understanding that Senator Long will be along in a just a few moments, so I think what we may do is recess. But I do want to indicate that we hope to complete the markup on this bill this week, which means we are meeting today, tomorrow and Friday.

I know there are a number of amendments. We will not try to shut anyone off. But it is my hope that we can complete the markup. We have an indication we will have at least ten independents. We need seven. Is that correct, on amendments?

Mr. DeArment: We need seven to commence business and five to continue business.

1 Chairman Dole: Seven to commence and five to continue.
2 Well, we are up to three already.

3 Senator Danforth: Four.

4 Chairman Dole: Oh, Jack, four.

5 Senator Danforth: I lost weight.

6 Chairman Dole: Yes, you slipped in.

7 So we will stand in recess until 10:30, at which time
8 Senator Packwood has agreed to preside, and I will be back at
9 about ten of 11:00.

10 [Recess.]

11 Senator Packwood (Presiding): We have five. Senator
12 Bradley, if someone will call him back from Energy, would
13 give us six. I expect two or three others.

14 Although we need seven to start, does anyone object to
15 starting and discussing?

16 Senator Grassley: Yes, I would, Mr. Chairman.

17 Senator Packwood: The objection is heard. We will wait
18 until we have seven.

19 [Pause.]

20 Senator Packwood: We now have six. I am sure no one
21 would object to going ahead with six.

22 Senator Chafee: I am not so sure about that.

23 How many do we have, Mr. Chairman?

24 Senator Packwood: I think he wants to see who we have
25 got, not how many.

1 Senator Chafee: The rules are there to be observed, Mr.
2 Chairman, I think.

3 Senator Packwood: Unless is objection.

4 Senator Chafee: There is objection.

5 Senator Packwood: If everyone will hold their spot,
6 Senator Bradley will be right back.

7 [Pause.]

8 Senator Packwood: The committee will come to order. We
9 have seven.

10 Rod, where were we yesterday when we left off?

11 Mr. DeArment: We were debating a Dole amendment, the
12 Chairman's amendment that would provide for a committee
13 amendment to this legislation to make the tax credits
14 refundable. This was a substitute for Senator Chafee's
15 amendment to provide directly in the bill for a refundable
16 tax credit.

17 Senator Packwood: The Chairman, I assume, would provide
18 that we will offer it on the floor but not put it in the bill.

19 Mr. DeArment: That is correct.

20 Senator Packwood: All right.

21 Discussion on the amendment?

22 Senator Chafee: Well, Mr. Chairman, it seems to me if we
23 are going to do this, this is the proper place to do it.

24 The worry seems to be that the Appropriations Committee
25 might hold the bill for a while, might have some objections

1 to it, and rightfully they might; because, Mr. Chairman, as
2 the Senator from Missouri so aptly pointed out yesterday,
3 with the refundability measure, which I support, we are
4 embarking upon a new entitlement program.

5 Now, everyone on this panel inveighs against entitlement
6 programs, and if we are going to go into one -- and I do
7 support this -- then at least we ought to have some better
8 idea of the figures that were provided and some thought as to
9 whether the Appropriations Committee is prepared to go ahead
10 with this.

11 I think in the proper administration and development of
12 this legislation it is right that it goes to the proper
13 committee, and that would be the Appropriations Committee.
14 And what we are engaging in here is a not very subtle
15 sidetracking of the legislation, a skirting of the
16 appropriate committee.

17 Senator Packwood: No. I think we are just trying to
18 help, Howard, by expediting the legislation so there is not
19 undue delay.

20 Senator Chafee: I have never heard -- if Howard is the
21 majority leader, he has never indicated any rush for this
22 legislation. And we have the balance of this year, we have
23 the balance of next year in the same Congress, so what is the
24 rush?

25 Senator Packwood: You remind me of Lowell Weicker when

1 we were trying to set a time limit last year for voting on
2 abortion. He said to Jesse Helms we can vote in 1987 on this
3 legislation. At some stage I would hope we are going to vote
4 it up or down.

5 As far as it being an entitlement program and going to
6 Appropriations, this is an entitlement program whether or not
7 we add refundability.

8 Senator Chafee: That is right. It has a capital E for
9 entitlement with refundability, but it is an entitlement
10 program one way or the other. I recognize that, and I am
11 shocked that Mr. Chapoton, who is so concerned about
12 expenditures and who worries about the national debt, as I
13 know he does, comes forward and espouses this program.

14 Senator Boren: Mr. Chairman, just a procedural question.

15 Of course I agree with Senator Chafee on this, and I do
16 not think we ought to rush because we are going to have so
17 much time to vote it on the floor if it ever gets there. But
18 I wonder, procedurally speaking, I think the Chairman's
19 motion was offered in the nature of a substitute to Senator
20 Chafee.

21 Senator Chafee had moved we adopt refundability as an
22 amendment to the bill, is that correct? And this was offered
23 in the nature of a substitute.

24 Senator Packwood: I was not here yesterday.

25 Rod, was that the form?

1 Mr. DeArment: Yes.

2 Senator Boren: So if the Chairman's motion is passed, it
3 would cut off the Chafee motion. I favor refundability, but
4 if I voted against the Chairman's motion and it failed, then
5 the Chafee motion would still be before us. Is that the
6 procedural situation?

7 Senator Packwood: That is correct.

8 Bill.

9 Senator Bradley: Mr. Chairman, the procedural situation
10 is if you want refundability in this bill, then you would
11 support the Dole amendment which is a substitute for the
12 Chafee amendment. If you do not want it, then when it is
13 added as a committee amendment, when it comes to the floor
14 you will have a chance there to vote against refundability on
15 the floor. But if you are for refundability, then you should
16 vote for the Dole amendment. It is as simple as that. And
17 if you want to, according to Senator Chafee, improve the
18 legislation -- in his viewpoint he thinks the legislation is
19 bad -- I think we should pass it. I do not think it is.

20 And, therefore, what we want to do is get a vote on
21 something we can agree on, which is refundability. He thinks
22 it will improve it. I believe also it will improve the
23 legislation. And the Chairman's motion gives us an
24 opportunity of putting the committee on record and clearly
25 making it a part of the bill when it comes to the floor. And

1 if those who oppose refundability want to vote against it on
2 the floor, they will have that chance with the committee
3 amendment.

4 Senator Packwood: I think realistically considering the
5 fact this bill has taken five or six years to germinate here,
6 if we send it to the Appropriations Committee, I have no idea
7 where they stand, but for those who do not want the bill,
8 they have a better chance of stopping it by sending it there
9 then they do by not sending it there.

10 Senator Bradley: There is no question of that.

11 Senator Packwood: They may be receptive of the bill;
12 they may not. But clearly, we do not know that.

13 Senator Chafee: Mr. Chairman, I have listened to some
14 involved reasoning in this chamber and in this Senate for
15 many years, but I think we have trouble matching that
16 propounded by the Senator from New Jersey. He is saying if
17 you want refundability, you will vote against refundability.
18 That is really what he is saying. Whereas we are saying --

19 Senator Bradley: I did not say that at all.

20 Senator Packwood: That is not correct.

21 Senator Chafee: He is proposing sending out of this
22 committee a bill that does not have refundability on it.

23 Senator Packwood: With the agreement --

24 Senator Bradley: Sending it out of this committee but
25 having it added on the floor, because we do not know if the

1 Appropriations Committee will act on it at any time
2 whatsoever. It might be three years. What if it is five
3 years? It would suit your purpose, but it would not suit
4 mine.

5 Senator Chafee: But the bill will leave this committee
6 with refundability on it if we vote on it today. And to say
7 that we will postpone it and take it on the floor, mind you,
8 it is not certain it would be accepted on the floor. There
9 might be objections. The committee chairman cannot just
10 blithely accept any amendment that comes along. There might
11 be objections to it.

12 So if you want -- do not anyone be fooled by what the
13 vote is here. If you want refundability, you will vote
14 against the Dole substitute and for the Chafee amendment.

15 Senator Packwood: Make no mistake, my hunch is whether
16 or not we were to add it in this committee and it ever got to
17 the floor, there will be a vote on refundability. It will be
18 to either strike it out or add it. You will have a vote on
19 refundability on the floor depending on which way the bill
20 gets to the floor. So no one will be deprived one way or the
21 other of getting a chance to vote on refundability. The
22 question is do we want the bill to get to the floor at all.

23 Is there further discussion on the Chairman's substitute?

24 [No response.]

25 Senator Packwood: If not, the Clerk will call the roll.

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

1 Senator Boren: No by proxy.

2 Mr. DeArment: Moynihan.

3 [No response.]

4 Mr. DeArment: Baucus.

5 Senator Packwood: No by proxy.

6 Mr. DeArment: Boren.

7 Senator Boren: No.

8 Mr. DeArment: Bradley.

9 Senator Bradley: Aye.

10 Mr. DeArment: Mitchell

11 [No response.]

12 Mr. DeArment: Pryor.

13 Senator Pryor: No.

14 Mr. DeArment: Mr. Chairman.

15 Senator Packwood: Aye. And Senator Roth is aye by proxy.

16 Senator Bradley: Mr. Chairman, Senator Moynihan votes

17 aye by proxy.

18 Senator Packwood: Eleven yeas, 5 nays. The Chairman's

19 motion is adopted.

20 Are there other amendments before we vote on reporting

21 the bill?

22 Senator Chafee: Yes, Mr. Chairman. We now have shown by

23 the vote of the committee that one way or another people are

24 for refundability.

25 Now, I would refer the committee to page 3 -- no, page 26

1 of the bill where it has the language that follows: "Tax
2 credits claimed under Section 44(h) of the Internal Revenue
3 Code of 1954 shall not constitute federal financial
4 assistance to educational institutions or to the recipients
5 of such credits."

6 Now, if that is not mumbo-jumbo. It is after we have
7 determined that tax credits will go to individuals, and
8 indeed they will achieve refundability. Now we say that the
9 tax credits shall not constitute federal assistance to the
10 recipients of such credits. That does not make any sense at
11 all. Obviously, it is a federal assistance, federal
12 financial assistance to the recipients of such credits.

13 And, therefore, Mr. Chairman, I would substitute -- I
14 would strike that in its entirety and substitute -- on page
15 3, down at the bottom, it says, "Purpose: The primary
16 purpose of this act is to enhance quality of educational
17 opportunity, diversity and choice for Americans." And the
18 primary purpose of this act is to provide federal financial
19 assistance to individuals with dependents attending nonpublic
20 schools.

21 That is what it is, and we might as well say so. But to
22 have on page 26 that strange line that it shall not
23 constitute federal financial assistance to educational
24 institutions or the recipients makes no sense whatsoever.

25 Mr. Chapoton, could you enlighten us on that?

1 Mr. Chapoton: Would you include the institution and the
2 recipient?

3 Senator Chafee: No. I would strike out anything about
4 institutions. Just leave that out and go back to the purpose
5 of the act, which is to provide federal financial aid to
6 people with dependents.

7 Senator Packwood: I am confused. What are you striking
8 out?

9 Senator Chafee: On page 26, I would strike out Section 5
10 in its entirety. It does not make any sense.

11 Senator Packwood: All right.

12 Mr. Chapoton: Senator, would you consider amending or
13 altering Section 5 to take out the reference to the
14 recipient? It seems to me that is the point of your change,
15 that you are suggesting that it is assistance to recipients
16 and not to the institution.

17 Senator Packwood: Before you make that offer, I know the
18 reason this was put in. No one has ever attempted to make
19 the argument seriously that a tax deduction for a
20 contribution to a church is any kind of federal assistance to
21 that institution or the recipient. This was simply put in
22 here as a caveat to courts that we did not want them giving
23 this a different interpretation than they might give to a
24 normal charitable contribution to a church. That is the
25 purpose of it, John.

1 Senator Chafee: Wait. There is a world of difference
2 between a charitable contribution that an individual makes
3 out of his pocket to a church and the federal government
4 giving a tax credit to an individual. Now, anybody can see
5 that. I think we are not arguing anything analogous here.

6 Senator Packwood: I think it is marginal. You can give
7 a tax deduction to the church for the purpose of running the
8 school if you want.

9 Senator Chafee: Those are tax deductions in which the
10 individual makes a contribution. Here is a tax credit which
11 is a subtraction from someone's income tax. And I think to
12 put in something that it is no federal financial assistance
13 to the recipient of such credit makes no sense at all.

14 Senator Packwood: Is there further discussion on the
15 amendment?

16 Mr. Chapoton: Senator, if I may --

17 Senator Packwood: Go ahead.

18 Senator Chafee: I would like to hear Mr. Chapoton.

19 Mr. Chapoton: I would like to say I think you would
20 agree that a credit and deduction are really no different
21 other than the magnitude of the benefit. I think the logic
22 of your argument, as Senator Packwood is pointing out, would
23 have to go that there is federal assistance to persons who
24 make gifts to churches or other charitable organizations.
25 That point is often made. But if that is your point here, I

1 think it is equally applicable there.

2 Senator Chafee: I do not think it is.

3 Senator Boren: Mr. Chairman, I think Senator Chafee has
4 a good and important amendment. I think we must also be
5 aware of the fact that there is still a question pending in
6 the courts in terms of what constitutes federal aid. And it
7 becomes an important issue in terms of the potential for
8 racial discrimination because of the applicability of certain
9 portions of the civil rights laws to situations where federal
10 aid is deemed to be involved. In other words, there is a
11 higher standard of conduct in terms of prohibiting
12 discrimination in situations in which federal funds are
13 involved where you have a governmentally operated institution
14 than when it is purely private.

15 So I think from the point of view of those of us
16 concerned that we may have a series of changes in the
17 educational structure that would tend to change the racial
18 makeup of schools, particularly in the south and southwest,
19 that it is very important that we let it be known in this
20 legislation that this is federal aid; and therefore, the full
21 protections of civil rights legislation which go to
22 institutions receiving governmental aid, the full provisions
23 of all civil rights legislation would be applicable,
24 therefore would follow these funds.

25 So I strongly support Senator Chafee's amendment.

1 Senator Chafee: One other point, Mr. Chairman. Not only
2 is what Senator Boren says valid, but give me an example, Mr.
3 Chairman, under your charitable deduction analogy where if
4 one wishes to make a charitable deduction but cannot afford
5 to do so, the federal government will make it for him. And
6 that is what we have here with the refundability.

7 Senator Packwood: We do not have refundability in this
8 bill yet.

9 Senator Chafee: But the bill is determined to go to the
10 floor with refundability. That is what Senator Bradley has
11 assured us. So when we reach the floor, it will be there.

12 Senator Packwood: When it reaches the floor, it will be
13 offered. I am sure it will be debated, and I am sure there
14 will be votes against it.

15 Senator Chafee: We might as well straighten it out
16 here. This is a little esoteric, and we do not want people
17 on the floor to get confused.

18 [Laughter.]

19 Senator Chafee: Mr. Chapoton, could you help me on
20 that? You were drawing the analogy of the deduction.
21 Suppose I am poor and I wish to contribute to my church and I
22 cannot afford to do so. Will the government make the
23 contribution for me?

24 Mr. Chapoton: No, of course not.

25 [Laughter.]

1 Mr. Chapoton: I think the point is here that this bill
2 does not have refundability in it, and the point you are
3 making goes solely to refundability.

4 Senator Packwood: Do I understand also, Mr. Chapoton,
5 that the administration is opposed to refundability and will
6 probably have that position known on the floor?

7 Mr. Chapoton: [Nods affirmatively.]

8 Senator Chafee: Why do we not find out now? Mr. Jones
9 might help us on this.

10 Mr. Chapoton: We have not supported refundability, as
11 you know.

12 Senator Boren: The Bob Jones case is pending, as I
13 understand it, and is this not an issue as to whether or not
14 the civil rights discrimination language is applicable in the
15 Bob Jones case and in terms of whether or not we are
16 providing aid through tax credits and deductions? Is that
17 not an issue?

18 Senator Bradley: If the Senator will yield on that, the
19 amendment that was adopted last year in committee went to
20 this exact point and said that no credit shall go into effect
21 until either the Bob Jones case is decided, so that a school
22 that practices racial discrimination shall not be eligible
23 for tax-exempt status, or until the Congress acts so
24 affirmatively, saying that a school that is tax exempt shall
25 not have tax-exempt status if it racially discriminates. So

1 that is in the bill.

2 We have attempted to get directly at that point, that no
3 credit goes into effect until the Bob Jones case is decided.
4 Personally, I think this whole issue has been clouded by the
5 Bob Jones case, and that was the motivation for the amendment
6 last year that I offered and that the committee ultimately
7 adopted. So that we would be very strongly on record that we
8 would not provide not only credits but even tax-exempt status
9 to those institutions that practice racial discrimination.

10 Senator Packwood: Further discussion on the amendment?

11 Mr. Wilkinson: May I just say --

12 Senator Packwood: Yes.

13 Mr. Wilkinson: I think Senator Bradley points out there
14 is ample protection against racial discrimination in this
15 bill without trying to rework the definition of federal
16 financial assistance. And I think that doing that would
17 represent a major reinterpretation of a great many statutes
18 in Section 504 and in Title IX and Title VI.

19 All of these very carefully use the word "federal
20 financial assistance," and there is nothing in the
21 legislative history of those statutes which indicated that
22 Congress intended tax credits and tax deductions to qualify
23 as federal financial assistance.

24 If one pursues that road, it seems to me that a very
25 important concept is rewritten, and we are going down the

1 line to pervasive federal regulation of private schools and
2 churches.

3 Senator Packwood: I think the intent of the amendment is
4 pretty well known, and if there is no other discussion --

5 Senator Chafee: I would like to ask Mr. Wilkinson if his
6 same thoughts would prevail if, as predicted by Senator
7 Bradley, the refundability is adopted on the floor of the
8 Senate, then where are we?

9 Mr. Wilkinson: Well, I am not sure. I think it is best
10 to look at the bill as it is. And it seems to me the thrust
11 of this bill is that of tuition tax credits. And I think the
12 statement in the bill refers to tuition tax credits and says
13 that the tax credits shall not constitute federal financial
14 assistance. That is the statement in the bill.

15 Senator Chafee: Yes, but you are ignoring something.
16 The Chairman of this committee has stated that refundability
17 will be adopted on the floor. The majority of the committee
18 has spoken that way, too.

19 Now, would you answer my question? If that is so, is
20 that not federal financial assistance?

21 Mr. Wilkinson: The only thing that is not federal
22 financial assistance is a tuition tax credit. It is our view
23 that tuition tax credits do not constitute federal financial
24 assistance. That is the statement in the bill, and that is
25 the statement we stand by.

1 Senator Boren: Would you make the same argument with
2 regard to credits and deductions? Do you argue neither is
3 aid, is that correct?

4 Mr. Wilkinson: Yes.

5 Senator Boren: So the administration is arguing to the
6 court, is that correct, that the Bob Jones University is
7 entitled to tax-exempt status because it is the same and it
8 has no federal aid? Is that the argument of the
9 administration before the court in the Bob Jones case? I am
10 shocked if it is.

11 Mr. Wilkinson: There is no need to be shocked. That is
12 not the argument of the administration.

13 Senator Boren: It is not? So you are not stating the
14 administration's position on this matter? I am confused. I
15 thought you were saying tax credits and tax deductions,
16 neither one of them constituted any form of federal aid, and
17 therefore, neither one of them would have any applicability
18 to the racial discrimination question.

19 But that is not the position of the administration in the
20 Bob Jones case, is it?

21 Mr. Wilkinson: The position of the administration in the
22 Bob Jones case is that private discriminatory academies are
23 not entitled to tax-exempt status. That very clearly is the
24 position of the administration in the Bob Jones case.

25 Senator Boren: So they are arguing that a tax-exempt

1 status and the right to receive tax deductions would
2 disqualify them from being able to racially discriminate.

3 Senator Packwood: Could I make a point on what I think
4 is the administration's position on Bob Jones?

5 Correct me if I am wrong, although I am not sure their
6 position is mine. Their argument is the IRS does not have
7 the statutory authority.

8 Mr. Wilkinson: That is the only argument. It is a
9 separation of powers question. It is certainly not a
10 question in any respect of racial discrimination.

11 Senator Packwood: And the administration has asked that
12 a law be passed indicating that the statutory authority is
13 there.

14 Mr. Wilkinson: If the court were to rule that the
15 Commissioner did not have the authority, the administration
16 would come forward promptly with a bill that would deny to
17 segregationist academies any kind of tax-exempt status, and
18 that is clearly the administration's position. It is one of
19 separation of powers. It has nothing to do with tax-exempt
20 status for racially discriminatory institutions.

21 Senator Dole: Is there further discussion?

22 [No response.]

23 Senator Packwood: If not, the Clerk will call the roll.

24 Mr. DeArment: Packwood.

25 Senator Packwood: No.

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

1 [Laughter.]

2 Senator Grassley: Well, I will do what I can to make our
3 work as easy as possible, yes.

4 Chairman Dole: Are you going to put zeros in?

5 [Laughter.]

6 Senator Grassley: I want to offer the same amendment I
7 offered a year ago and that was adopted. That amendment
8 would change the \$60,000 top for the phaseout of the credit
9 to the \$50,000 figure. This would have a savings of \$16
10 million for 1984, \$35 million for 1985, \$50 million in 1986,
11 and when you get out to 1987 it would mean that the tax
12 credit would be less of a loss to the Treasury of \$53 million
13 a year, and I assume that would be fairly constant from there
14 on out.

15 The reason I offered my amendment a year ago and the
16 reason I am offering it this year is not for the rationale
17 that was given yesterday, that it was an excuse to pay for
18 the refundability or the cost of refundability. But if that
19 is a reason why people want to vote for it, that is all right
20 with me. But the reason I offered it a year ago was because
21 of the legitimate rhetoric that was used throughout the
22 debate of the 1981 and 1982 tax bills in which we tried to
23 define middle income taxpayers as those people falling into
24 the \$20,000 to \$50,000 tax bracket. I think that has been
25 pretty uniform on both sides of the aisle.

1 Senator Moynihan: No.

2 Mr. DeArment: Baucus.

3 [No response.]

4 Mr. DeArment: Boren.

5 Senator Boren: Aye.

6 Mr. DeArment: Bradley.

7 Senator Bradley: No.

8 Mr. DeArment: Mitchell.

9 [No response.]

10 Mr. DeArment: Pryor.

11 Senator Pryor: Aye.

12 Mr. DeArment: Mr. Chairman.

13 Chairman Dole: No.

14 On this amendment the nays are 11 and the yeas are 5.

15 The amendment is not agreed to.

16 Senator Grassley: Mr. Chairman, can I bring up my

17 amendment now?

18 Chairman Dole: Yes.

19 Senator Chafee: I believe Senator Boren wanted to --

20 Chairman Dole: I am sorry. I was not here earlier.

21 There may have been an agreement.

22 Senator Boren: It is all right.

23 Senator Grassley: If I may go ahead, I have a budget

24 meeting.

25 Chairman Dole: There is no need to hurry to that.

1 And my feeling that I wanted to have the benefits of this
2 tax credit go to those people in middle income and low income
3 categories, and my feeling also that 2 percent of the total
4 population in this country that has income of more than
5 \$50,000 a year ought to be able to afford a private education
6 for their children so that the fruits of this can be reserved
7 for those middle income and low income classes.

8 I know it is fairly arbitrary to pick \$50,000 or
9 \$60,000. I proposed the phaseout of \$30,000 to \$50,000, and
10 then I compromised on having the phaseout start at \$40,000
11 and end at \$50,000. But this was part of the bill that we
12 voted on the floor last year, and I would appreciate it being
13 part of the bill this year. And I think it is an amendment
14 which at least last time had support on both sides of the
15 aisle.

16 Chairman Dole: Any objection to the amendment?

17 Senator Chafee: I would like a roll call, Mr. Chairman.

18 Senator Long: What is the phaseout point right now?

19 Senator Grassley: It begins at \$40,000 and ends at
20 \$60,000. And as I said previously, I would have preferred to
21 have the phaseout begin at \$30,000 and end at \$50,000, but I
22 lost on the \$30,000 figure a year ago, so I will not go
23 through that battle again. But I was successful on the
24 \$60,000 figure, and consequently then I am offering it again
25 this year.

1 Chairman Dole: Could we hear from Mr. Chapoton?

2 Mr. Chapoton: If I could say briefly, as Senator
3 Grassley knows, one of the things we ought to keep in mind is
4 you are talking about two-earner families a lot, and when you
5 drop it down that low, you drop it below where a lot of the
6 benefit could certainly be appreciated.

7 In addition, when you have only a \$10,000 phaseout gap,
8 it has a tremendous effect on the people in that \$10,000
9 range. It has the effect of a very high marginal rate as the
10 income goes from \$40,000 to \$50,000. You would smooth it out
11 a lot by doubling the phaseout phase.

12 Senator Durenberger: Mr. Chairman, just a brief comment,
13 maybe in part by way of question. This is one of those
14 motherhood kind of amendments which on its face seems tough
15 to vote against. But I hope we understand not only what Mr.
16 Chapoton just said about the two wage earner families. And
17 that is not a Senator and his wife; that is a truck driver
18 and a husband, let us say, or vice-versa in Iowa.

19 [Laughter.]

20 And a whole lot of people who have recently found out the
21 effect of taxes at all levels in this country.

22 So I think in part our old notion of the \$50,000 folks
23 being the millionaires in this country is going by the board.

24 The other one that is important to keep in mind is this
25 is a credit, not a deduction; so to a degree we have tried to

1 address the issue of economic equity already. If this were a
2 deduction such as in the Minnesota law or has been proposed
3 in other areas, then obviously the higher up you go on the
4 income scale, the greater benefit you are getting. But we
5 are already coming along with a notion where the person who
6 is genuinely down there at the hurting stage, at \$20,000 or
7 something like that, is getting just as much dollar benefit
8 out of this proposal as someone who is up at \$40,000. So we
9 do not have the traditional discrimination that you find in a
10 lot of these sort of things against the middle and lower side
11 of the scale.

12 And I felt I needed to make that point, because I will
13 probably vote against your recommendation. I think you are
14 going to find yourself getting a lot of so-called, at least
15 to them, middle income people strapped already with
16 substantial cost of tax-paid education as well as education
17 you are trying to help here, putting them in a discriminatory
18 bind.

19 Chairman Dole: I have just one question. This does not
20 change in three or four or five years. Another point is five
21 or ten years from now \$50,000 will be even less than it is
22 today.

23 Do you keep it there permanently?

24 Senator Grassley: I keep it that way. I do not index
25 it. But I think the other thing you want to remember --

1 Chairman Dole: I was not thinking of indexing. I was
2 suggesting going to the administration's position after a
3 period of five years or something.

4 Senator Grassley: I would only suggest to you concerning
5 the fact that we have the \$100, \$200, and \$300 tax credit
6 sometime down the road, as we have inflation and incomes are
7 higher that will be reviewed, and I think the time to review
8 the \$50,000 would be at the same time we are reviewing the
9 tax credit as a whole.

10 Chairman Dole: All right.

11 The Clerk will call the roll.

12 Mr. DeArment: Mr. Packwood.

13 Senator Packwood: Aye.

14 Mr. DeArment: Mr. Roth.

15 Chairman Dole: Aye.

16 Mr. DeArment: Mr. Danforth.

17 Senator Danforth: Aye.

18 Mr. DeArment: Mr. Chafee.

19 Senator Chafee: Aye.

20 Mr. DeArment: Mr. Heinz.

21 [No response.]

22 Mr. DeArment: Mr. Wallop.

23 Chairman Dole: Aye.

24 Mr. DeArment: Mr. Durenberger.

25 Senator Durenberger: No.

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

1 Chairman Dole: Aye.

2 I have a correction to make. Wallop, Symms and Roth are
3 no rather than aye. Just a little technical mistake there.

4 Senator Long: I think I would like to have voted no
5 instead of aye.

6 Chairman Dole: On this vote the yeas are 11 and the nays
7 are 5. Let us see. Wallop, Symms, they were changed.

8 All right. Any further amendments? If not --

9 Senator Grassley: On that particular vote, that is the
10 final tally, right?

11 Chairman Dole: Eleven to five. The absentees will have
12 a chance to be recorded.

13 Senator Grassley: But 11 is a majority. A year ago
14 there was some movement around here to defeat me on that to
15 satisfy the administration. Now, I want to make sure that
16 does not happen on this one.

17 Chairman Dole: I cannot imagine that taking place, but
18 if I detect it, I will notify you.

19 [Laughter.]

20 Senator Boren: Mr. Chairman, I have an amendment that
21 amends the bill in four places. Perhaps the easiest way
22 would be to explain.

23 On page 12 of the bill, lines 15 and 19, the section on
24 defining racially discriminatory policy would be stricken.
25 The very same language would be stricken on page 25, line 17

1 through 21. Those lines would be stricken and the sections
2 renumbered.

3 The most important part of the language, the effect of
4 the change, if you turn to page 20, I think I can explain
5 it. It amends both page 20 and page 23, line 20 the same
6 way, but page 20, line 24.

7 The bill presently says the institution is engaged in a
8 pattern of conduct intended to implement a racially
9 discriminatory policy. That is the definition of racial
10 discrimination, but it is intended to implement a racially
11 discriminatory policy, the intent test. My amendment would
12 strike the words "intended to implement" and insert in lieu
13 thereof the words "which has the purpose or effect of
14 implementing."

15 It would make the very same change on page 23, line 20.
16 It would strike "intended to implement" and insert in lieu
17 thereof the words "which has the purpose or effect of
18 implementing."

19 Now, this brings us to an issue that is a very familiar
20 issue to all of us. We confronted exactly the same issue in
21 the voting rights legislation which passed the Senate
22 overwhelmingly. And I am happy to say that the Senate at
23 that time very strongly went on record in favor of the
24 effects test and rejected the intent test.

25 As we all know, it is very, very difficult to prove

1 intent. It is very difficult to prove an attempt to
2 discriminate. And I think it would be a tragic step
3 backwards in terms of the strong policy of the Senate and the
4 strong policy of this committee to protect against racial
5 discrimination if we were to water down the law as we have
6 been writing it over the last several years to prohibit
7 racial discrimination and retreat back to requiring a
8 demonstration of the intent to discriminate.

9 So I would urge the members of the committee to think
10 very carefully about this amendment. I hope this is one of
11 the amendments I have high hopes will be adopted by the
12 committee.

13 I do not think it is a matter of whether you are for or
14 against tuition tax credits on this issue; and I would hope
15 we would not confuse it with some other amendments that I
16 will perhaps be offering that go to the fact that I am not
17 for tuition tax credits. But this is a totally separate
18 matter, a matter of whether we want to retain the very strong
19 standard on racial discrimination that we have written into
20 the law in previous years. And I would move the adoption of
21 this amendment.

22 Chairman Dole: I wonder if we might hear from the
23 administration.

24 Mr. Wilkinson: I think there are several points. As I
25 understand it, you wanted to strike the language in the bill

1 which says that "The term 'racially discriminatory' policy
2 shall not include the failure of any educational institution
3 to pursue or achieve any racial quota or proportion."

4 We would oppose your amendment and strongly urge that
5 this anti-quota language be retained in the bill. We do not
6 believe that private schools ought to be required to have
7 their student body reflect the racial balance of the
8 community. What we are interested in is a strong statement
9 against discrimination and a tough standard of
10 nondiscrimination. And we believe this bill speaks
11 forcefully in three different ways to ensuring that no
12 institution discriminates on the basis of race.

13 On the other hand, to require that any kind of private
14 school have a certain proportion of a certain racial balance
15 in its student body in order for parents of students to
16 receive tax credits is to impose an unrealistic burden upon
17 the school that it may not be able to meet through no fault
18 of its own. And we strongly support a nondiscriminatory
19 standard, and we do not support the imposition of quotas. We
20 thus would oppose those amendments.

21 Would you like me to address the other amendment now,
22 Senator, on the purpose or effect language?

23 Chairman Dole: Yes.

24 Mr. Wilkinson: We would also oppose this kind of an
25 amendment because it would infringe, I think, quite severely

1 upon legitimate policies of the schools involved. For
2 example, a tuition payment might be ruled to have some kind
3 of disparate impact; and thus, if a school adopted a certain
4 schedule of tuition payments, that might be struck down under
5 Senator Boren's amendment. Likewise, some kind of test to
6 get in the school might or might not be seen by a court to
7 have a disparate impact, a disparate effect. And when you
8 adopt effects language, you put both tuitions and tests
9 conceivably in some form of jeopardy. And I think that is a
10 very intrusive step for such language to take into the
11 operation of these kinds of schools.

12 I might also add that if the Senator's amendment is
13 addressed to only one of the three means of which this
14 committee has previously approved as a means to find
15 discrimination, and the other two standards indicate that a
16 single discriminatory act taken pursuant to a racially
17 discriminatory policy is enough to have an institution
18 declared ineligible.

19 So I simply do not agree with the Senator's argument that
20 under this bill it is going to be impossible to prove racial
21 discrimination. It seems to me that these first two prongs
22 of the test make it quite possible and feasible to prove
23 racial discrimination on the part of an institution which
24 does in fact discriminate.

25 Chairman Dole: If I might just interject here, there has

1 been objection raised on the Senate floor by two of my
2 Democratic colleagues who marked this bill up. There is a
3 two-hour rule, and the time is now 11:30. The two hours have
4 expired, so any amendment we adopt or whatever action we take
5 would be subject to a point of order on the floor. So I
6 assume the best thing we can do at this time is recess until
7 9:30 tomorrow morning.

8 [Whereupon, at 11:30 a.m., the committee was recessed, to
9 be reconvened at 9:30 a.m., the following day, Thursday, May
10 19, 1983.]

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