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HEARINGS

Before the

COMMITTEE ON FINANCE

UNITED STATES SENATE

EXECUTIVE SESSION

Washington, D.C.

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EXECUTIVE SESSION

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Thursday, May 19, 1983

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United States Senate

Committee on Finance

Washington, D.C.

8 The Committee met, pursuant to notice, at 10:20 a.m. in
9 room SD-215, Dirksen Senate Office Building, Hon. Robert J.
10 Dole [Chairman of the Committee] presiding.

11 Present: Senators Dole (chairman of the committee),
12 Packwood, Roth, Danforth, Chafee, Durenberger, Armstrong,
13 Symms, Grassley, Long, Bentsen, Moynihan, Boren and Bradley.

14 Staff present: Roderick DeArment, Deputy Chief Counsel;
15 Donald Susswein, Counsel; Jeffrey Gates, Counsel; Michael
16 Stern, Minority Staff Director; David Brockway, Chief of
17 Staff, Joint Committee on Taxation; and Floyd Williams,
18 Legislation Attorney, Joint Committee on Taxation.

19 Also present: Gary Jones, Under Secretary of Education;
20 John Chapoton, Assistant Secretary of Tax Policy, Department
21 of Treasury; J. Harvie Wilkinson, Deputy Assistant Attorney
22 General, Civil Rights Division, Department of Justice.

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24 Chairman Dole: As I understand, we now have seven live
25 members and we can proceed to do business.

1 Mr. DeArment: That is correct, Mr. Chairman, we have a
2 quorum.

3 Chairman Dole: After seven, we can continue with five to
4 work on amendments.

5 Mr. DeArment: That is correct.

6 Chairman Dole: First I want to recognize Senator Roth,
7 who is chairing another hearing, to make a statement.
8 Senator Roth.

9 Senator Roth: Thank you, Mr. Chairman.

10 I regret that I cannot be here this morning because we
11 have in Government Affairs hearings on military procurement
12 of long standing. It is necessary that I be there for
13 purposes of presiding.

14 I would just like to say to you, and publicly, that I
15 have been, of course, one of the strongest supporters of
16 tuition tax credits, not only for elementary, secondary, but
17 for college as well, and I strongly support the
18 Administration's efforts as to what they are doing.

19 Frankly, Mr. Chairman, I would like to offer an amendment
20 to have it cover colleges as well. As you know, this is
21 something I thought, as Senator Long I am sure remembers, we
22 got it into conference and almost got it written into law. I
23 do not intend to propose college at this time, even though I
24 am strongly supportive and will continue to fight for it,
25 because of the deficit problems.

1 But I just want to make the record clear that this is
2 something I will proceed with in the future. I think it is
3 important. In the meantime, I am hopeful that we can get the
4 elementary and secondary enacted into law.

5 Thank you, Mr. Chairman.

6 Chairman Dole: Thank you very much. The record does
7 properly reflect your interest and your concern about the
8 deficit, which we appreciate. Thank you.

9 What is the pending amendment?

10 Senator Long: I think Senator Boren's amendment.

11 Mr. Brockway: It was Senator Boren's amendment which
12 would delete the language relating to quotas in the bill and
13 it would strike out the language dealing with
14 discrimination.

15 Mr. DeArment: It would essentially substitute a purpose
16 and effect test for the intention test that is in the bill.

17 Mr. Brockway: Right.

18 Mr. DeArment: That is correct.

19 Senator Long: Mr. Chairman, I do not think I am for the
20 amendment. Senator Boren sent me word that he is on his way
21 and maybe we could temporarily lay this one aside until he
22 gets here and consider some other amendment. That would give
23 him a chance to speak for his amendment.

24 Chairman Dole: Are there other amendments the Senators
25 want to offer on this measure?

1 Senator Durenberger: I have two or three.

2 Chairman Dole: Senator Durenburger.

3 Senator Durenberger: The first of these is an amendment
4 to extend the tax credit to tuition paid to all elementary
5 and secondary schools, whether government or private, which
6 would otherwise qualify under the terms of this Act. I will
7 not make a long involved argument in favor of it, other than
8 to say there is a lot of precedent for the Federal Government
9 playing a role in providing assistance of some kind to
10 education.

11 And I will not get into the issue of whether it goes to
12 institutions or individuals, but in a wide variety of ways
13 that we have discussed at the hearings on this bill we
14 provide both in elementary and secondary education and the
15 higher education level for a variety of forms of assistance,
16 some of it through tax expenditures in the form of deductions
17 for charitable contributions, which include educational
18 contributions.

19 Also, the deduction for state and local taxes paid
20 provides about a \$13.7 billion tax subsidy, if you will,
21 primarily for local government educational institutions. We
22 have a wide variety of special education grants that are
23 blind as to the public versus private issue.

24 But I think, Mr. Chairman, the heart of the argument is
25 whether or not we are going to try to pass a tax credit bill

1 that just stays within some artificial dollar limitation or
2 are we going to pass one that will survive a constitutional
3 test that we know will be coming. I am not a constitutional
4 scholar. I have not read all of the cases. I would not
5 predict what this particular Court is going to do in this
6 area.

7 But whether you look at the equal protection clause of
8 the Constitution or you look at the establishment clause of
9 the Constitution, you can see a clear trend in the direction
10 of nondiscriminatory, at least on a sectarian basis
11 nondiscriminatory, use of tax policy. This issue may be
12 decided before we decide it here in the Mueller case, which
13 has already been argued, coming from Minnesota and through
14 the Eighth Circuit, which upheld the district court decision
15 upholding the Minnesota legislation.

16 There is a different case coming from Rhode Island, I
17 believe. I think it is called the Norberg case, with a
18 slightly different set of circumstances. But in fairness, to
19 say the First Circuit Court in that case struck down the
20 Rhode Island statute.

21 I would argue strongly in favor of the Minnesota
22 approach. The establishment clause of the Constitution in
23 effect has been providing through interpretation a test
24 called the primary effect test as to whether or not a
25 particular piece of legislation has the primary effect of

1 helping primarily sectarian education. And the issue that is
2 going to lie before the Supreme Court right now is whether or
3 not you look at the existing institutions that provide
4 tuition and apply the tax credit against existing tuition.

5 You will find probably 80 to 85 to 90 percent of the
6 tuition and therefore of the credit that we pass will end up
7 benefiting private and sectarian education. But if you were
8 to presume, as some of us presume, that there is a growing
9 sense of need in the public or governmental school system to
10 move toward fees, expenses passed on to education consumers,
11 and then to tuition, and the only difference between private
12 schools and public schools today in a general sense is that
13 one provides tuition and the other does not, then you have
14 overcome the primary effect goes to sectarian test, because
15 all the public schools have to do is provide \$200 worth of
16 tuition and you qualify for the \$100 deduction and you
17 reverse the effect.

18 The effect then becomes about 90 percent to the
19 non-sectarian schools and only 10 percent to the sectarian.
20 And so for those reasons, if we want to get close to where
21 the Court is today, not knowing what they are going to do
22 with the Mueller case, but if we want to get as close as
23 possible to meeting the constitutional test -- that is, for
24 those of us who believe in tuition tax credits, -- I think it
25 is important that we make them available to all elementary

1 and secondary, students who attend all elementary and
2 secondary schools, not just those who attend private
3 schools.

4 So that is the basis, without more elaboration,
5 justification, for my amendment.

6 Chairman Dole: May I hear from the Administration on
7 that?

8 Mr. Chapoton: Mr. Chairman, we are not supportive of
9 this amendment. Strictly on the tax standpoint, there are
10 tax benefits for the financing of public education through
11 tax deduction, of course, for taxes paid and through tax the
12 tax exempt financing availability.

13 More importantly, the burden that we are addressing here
14 is the burden of taxes for public school by a parent who
15 sends a person to a private school, and trying to alleviate
16 that burden is the principal purpose of the tax credits. The
17 burden does not exist where tuition is not paid to a separate
18 private school.

19 We were not able, Senator, to come up with a revenue
20 estimate for this, although it would be quite substantial.
21 It is difficult to project what the patterns of financing for
22 public education would be if a change would occur if this
23 were adopted.

24 Chairman Dole: Do you have any cost estimates?

25 Mr. Chapoton: No, we really were not able. I think we

1 worked with this on the Joint Committee. The question is how
2 the pattern of financing of public education would change if
3 there were a credit for amounts paid, tuition paid to public
4 schools. Experts just are not able to agree how that would
5 happen, but it would be a substantial increase in the cost.
6 That is clear.

7 Mr. Brockway: Yes, it would be very difficult to have
8 any estimate with confidence. There are about ten times as
9 many public school children as private school children, but
10 right now, except in isolated cases, there is no tuition.
11 There are fees charged in public school systems where you
12 cross district boundaries, perhaps. There are situations
13 where you charge tuition. But other than that, that is
14 really it.

15 So there is a question of whether there will be an
16 inducement effect to raise tuition, and you cannot
17 necessarily predict it because the credit is only for half of
18 any tuition paid. So it is not at all clear to what extent
19 any jurisdiction would in fact impose tuition or fees on
20 public school children.

21 Senator Long: Let me get this straight. Does this
22 amendment extend the tax credit to the children in public
23 schools?

24 Mr. Brockway: That is correct, to the extent that they
25 pay tuition and fees.

1 Senator Long: Would that not enormously increase the
2 cost of this thing?

3 Mr. Brockway: Senator Long, we are really not in a very
4 good position to make any estimate on that, because right now
5 there are very few public school systems that would charge
6 tuition and fees. So there would not be any cost, Only if
7 they started to charge tuition and fees in response to this
8 amendment, and it is not clear whether they would.

9 The credit is not for the entire amount. It is only for
10 half of the amount.

11 Senator Long: That is how we get into these traps. I am
12 beginning to function now, I am beginning to get with it. I
13 find myself thinking about some things that were done around
14 here in bygone years.

15 I can recall when Abe Ribicoff came up with this
16 amendment for social services. We were going to put 75
17 percent matching of social services. The Department gave us
18 an estimate that that would cost \$40 million. We go down the
19 road for five years and the thing at that point is getting
20 ready to cost us not \$40 million, \$4 billion, which was 100
21 times the estimate.

22 The reason was that once we started putting up 75 percent
23 matching for social services, everybody began to discover
24 that first one thing and next another could be a social
25 service. So among those things, education could be a social

1 service and therefore they would call upon the Federal
2 Government to match them, and the Federal Government had to
3 pay three-quarters of all the expense of education.

4 And Mississippi was in the process of amending their law
5 to declare that highways were a social service and therefore
6 that we would pay 75 percent of the cost of building
7 highways. So at that point the cost was only 100 to one what
8 the estimate was, but it could have easily moved up to be 400
9 to one, because practically everything the state does can be
10 regarded as a social service in one respect or another. So
11 the estimate could have exceeded the cost by 10,000 to one.

12 I can see how if this were the law, while the states and
13 schools do not require any tuition, that they could once they
14 see it on the statute books. Any up and coming
15 superintendent of education would say, hold on just a minute,
16 all we have to do is amend our law to require \$100 tuition
17 and Uncle Sam will pay the tuition, so that will help defray
18 the cost. And in short order you might be paying \$100 a head
19 for every child in the public schools throughout the entire
20 United States.

21 I think if that is legal that any superintendent of
22 education worth his salt would be kind of an idiot or slow on
23 the uptake if he did not go in to the state legislature and
24 ask them to amend the law so he could charge the tuition for
25 these young people to go to the public schools.

1 I know I do not think the Senator has that in mind, but I
2 would like to ask, would that be within that?

3 Senator Durenberger: I would be happy to respond to
4 that. I find myself now -- or I found myself in the unhappy
5 situation of sitting on a Tax Committee that I felt was
6 making education policy. I do not think it is tax policy to
7 say that we are going to provide a little spiff here for
8 people who pay taxes to public schools and then send their
9 kids to private schools.

10 You are saying we want to preserve a dual system of
11 education, so we are going to give this little extra bump to
12 the folks in the private schools. I care about all kids,
13 wherever they go to school. I think if we are going to have
14 some national funding going into elementary and secondary
15 education, we have to decide how we are going to spend that
16 money.

17 Are we going to go down there on the floor and vote for a
18 \$1.4 billion add-on to categorical grants and loans, or are
19 we going to do it a much more efficient way, which is to get
20 everybody to charge a little tuition and then the folks out
21 there start making decisions about where they want to go to
22 school.

23 I understand the politics. I understand the politics of
24 that vote out there on the \$1 billion, just the way I
25 understand the politics of the difficulty of hanging onto a

1 \$100 cap or a \$200 cap or a \$300 cap on the tax credit.

2 But in response to your question, Senator, I think we are
3 making education policy here with this vote, and I think it
4 ought to apply across the board. You are absolutely right
5 about what is going to happen out there. I have no question
6 about it, and I hope it does happen.

7 Senator Long: I must confess to the Senator, I had
8 misjudged him. I thought the Senator from Minnesota was a
9 moderate Republican. That is how I judged him up to this
10 point.

11 [Laughter.]

12 Senator Long: But after having heard this amendment
13 explained, I am ready to nominate him for the Hubert Humphrey
14 award.

15 [Laughter.]

16 Chairman Dole: Let us vote on that.

17 Senator Bradley: Mr. Chairman.

18 Chairman Dole: Mr. Bradley.

19 Senator Bradley: Could I ask the Senator from Minnesota,
20 if your amendment would be accepted, would the tuition tax
21 credit at the federal level be similar to the tuition credit
22 in Minnesota at the state level?

23 Senator Durenberger: It would, if you add one more
24 feature, which I would propose in the second amendment, which
25 would include not only tuition but transportation, books and

1 other fees that are provided by the institution to the
2 individual.

3 Senator Bradley: Is this the Minnesota law that is
4 presently before the Supreme Court?

5 Senator Durenberger: Yes. That would be the Minnesota
6 law. Basically, I cannot make all the other comparisons, but
7 on those two points that is the Minnesota law that is
8 presently before the Supreme Court.

9 Senator Bradley: And all aspects of that law are
10 presently being reviewed by the Supreme Court?

11 Senator Durenberger: That is correct. The case has been
12 argued and I assume there will be a decision.

13 Senator Bradley: Mr. Chairman, I would like to reserve
14 the right on this vote at some future point, depending on
15 what happens to the case, to maybe vote differently if it
16 came up at a later date, but I will not be able to support it
17 at this time.

18 Senator Chafee: Mr. Chairman.

19 Chairman Dole: Yes.

20 Senator Chafee: I think this is just another bizarre
21 twist to a piece of outlandish legislation. I cannot see any
22 reason in the world why the proponents would not adopt it.
23 It goes right along with their general thesis that, the heck
24 with public education, we are going to have an uneven playing
25 field here and tilt everything in favor of the private and

1 parochial schools.

2 I would think you, Mr. Chairman, would be wildly
3 enthusiastic about this. It fits in perfectly properly.

4 [Laughter.]

5 Chairman Dole: I think it has great potential, but I am
6 not certain we want to take it up today.

7 Do you want a record vote?

8 Senator Durenberger: Yes, I think that would probably be
9 a good idea. But I have another one to propose.

10 Chairman Dole: Okay, let us go ahead and vote on this
11 one. If it passes we will not have to worry about the next
12 one.

13 Mr. DeArment: Mr. Packwood.

14 Chairman Dole: No.

15 Mr. DeArment: Mr. Roth.

16 [No response.]

17 Mr. DeArment: Mr. Danforth.

18 Senator Danforth: No.

19 Mr. DeArment: Mr. Chafee.

20 Senator Chafee: No.

21 Mr. DeArment: Mr. Heinz.

22 [No response.]

23 Mr. DeArment: Mr. Wallop.

24 Chairman Dole: No.

25 Mr. DeArment: Mr. Durenberger.

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

1 Mr. DeArment: Mr. Chairman.

2 Chairman Dole: The Chairman votes no.

3 Senator Packwood votes aye on this amendment.

4 I wonder if we might dispose of the pending Boren
5 amendment and then come back to this.

6 Senator Durenberger: I am ready to dispose of the others
7 without a vote, if I kept count.

8 Chairman Dole: I think the yeas were a little behind.
9 The nays are nine and the yeas are five. The amendment is
10 not agreed to.

11 Senator Durenberger: As I indicated, Mr. Chairman, I
12 intend -- if this passed, I think it would have been more
13 appropriate to recommend an amendment to include not only
14 tuition but books, educational fees and transportation
15 expenses. And depending on what the Supreme Court does and
16 the time line of this bill, I will probably reserve the right
17 to bring this to the floor.

18 My third amendment was to extend the tax credit to all
19 post-secondary educational institutions. I will not put that
20 amendment either, not necessarily for the same reasons as
21 Bill Roth, who has advocated this amendment a lot longer than
22 I, because I have a concern for the dollars involved, but
23 because I have been communicated with by the American
24 Association of State Colleges and Universities and the
25 National Association of Independent Colleges and

1 Universities, the Association of Catholic Colleges and
2 Universities, the Association of Jesuit Colleges and
3 Universities, the National Association of Independent
4 Colleges and Universities, and the American Council on
5 Education, all saying do not put your amendment.

6 I think it is a ridiculous position for them to take, but
7 for that reason I will not put my amendment.

8 [Laughter.]

9 Chairman Dole: How about the American Bankers
10 Association?

11 [Laughter.]

12 Chairman Dole: I would not want to act contrary to their
13 wishes.

14 [Laughter.]

15 Chairman Dole: Then, Senator Boren, your amendment is
16 pending. Are you ready for a vote on that?

17 Senator Boren: Yes, Mr. Chairman, I would. I would like
18 to go back and explain this just a little more, because I
19 think if I do I feel sure I will get the Chairman's vote on
20 that.

21 Chairman Dole: I understood that yesterday.

22 Senator Boren: Really, what we are trying to do is have
23 the same result that the Chairman -- I think it was your
24 language in the compromise which you fashioned in the Voting
25 Rights Act. And I have pulled a copy of the Voting Rights

1 Act, because what we are doing in the original text of this
2 bill does great damage to the kind of compromise language
3 which you worked out on the voting rights bill.

4 In the voting rights bill -- and I want to quote this
5 section again. It goes back to, what we have done in this
6 bill is not only shifted from an effects test to an intent
7 test. We definitely made that shift. We have not even left
8 it open to the courts.

9 You remember in the voting rights bill, those who were
10 against the effects test said, at least let us not bias the
11 case for the courts, let us at least have the courts consider
12 all the circumstances. In this bill as it is now written it
13 says:

14 "The term 'racially discriminatory policy' shall not
15 include failure of any educational institution to perceive or
16 achieve any proportion or representation in the student
17 body."

18 So you would be prohibited from even considering that at
19 all, the proportion of minority students in your student
20 body. You could not consider that at all in determining
21 whether or not there was racial discrimination.

22 Also, you have to prove intent. In the section on page
23 20, "The institution is engaged in a pattern of conduct
24 intended to implement a racially discriminatory". So you
25 must prove intent. You cannot -- you are prohibited by these

1 two sections. You cannot consider whether or not -- what
2 proportion of the student body is of a certain race as even a
3 factor in determining whether there is racial discrimination,
4 the way the bill is now written.

5 Now, in the Voting Rights Act Senator Dole fashioned,
6 helped to fashion, a compromise that got us off high center
7 on this question on the voting rights bill. Here is what was
8 said. It is an exact analogy because it goes to the question
9 of whether you look at the number of minority persons in the
10 population and their proportion to the number of elected
11 officials you have.

12 In other words, if you have 10 percent of a certain
13 racial minority in an area, does that constitute ten percent
14 of the locally elected officials? There were some who said
15 they wanted to be able to look at that definitely as a
16 factor. There were some who said they wanted it ruled out as
17 a factor, as has been done in this bill.

18 Now, the compromise that was struck says this: A
19 violation of this in the Voting Rights Act is established if,
20 based on the totality of circumstances, it is shown that the
21 political process leading to the nomination or election in
22 the subdivision was not equally open to participation by
23 members of a class of citizens. Now here is the important
24 part:

25 "The extent to which members of a protected class have

1 been elected to office in the state or political subdivision
2 is one circumstance which may be considered, one among
3 several which may be considered, provided nothing in this
4 section establishes a right to have members of a protected
5 class elected in numbers equal to their proportion."

6 So what was said in the Voting Rights Act is not that you
7 cannot consider it at all, which is what is said here -- "The
8 racially discriminatory policy shall not include failure of
9 any institution to pursue or achieve any proportion or
10 representation in the student body." You cannot even
11 consider it at all, plus you must prove intent under two
12 other sections of the bill.

13 This really -- and I hope the members of the Committee --
14 as I said, I think this is a totally separate issue beyond
15 how you feel about tuition tax credits in itself. But I
16 think it is a massive step backward in terms of what we have
17 done in other bills. It is a step backward even from the
18 compromise that was fashioned on this particular issue in the
19 voting rights bill.

20 And in order to leave it neutral, to leave it silent so
21 that you can consider it as one circumstance if you wanted it
22 to, I just propose striking out those two sections which
23 prohibit you from even considering the proportion of racial
24 membership in a student body. And I have said change the
25 strict intent rule, because this is a strict intent rule, to

1 say "which has the purpose or effect of implementing" -- so
2 either the intent or the effect of implementing a policy of
3 racial discrimination.

4 Then it would be left to the courts to decide, as we did
5 in the voting rights, whether or not, looking at all the
6 circumstances, the obvious underrepresentation of a minority
7 group in the student body did or did not constitute racial
8 discrimination in all the circumstances. It would not
9 require quotas by any means, leaving it silent, but it would
10 not rule out looking at all the circumstances.

11 So I hope that the Committee -- I know it was said
12 yesterday that we have other language in this bill that talks
13 about racial discrimination. Yes, we do. But when you look
14 at the section that defines what racial discrimination is, if
15 we said there shall be no racial discrimination, we define
16 racial discrimination solely based upon the extent to which
17 people with pink hair are or are not in student bodies, that
18 racial discrimination would have no meaning.

19 So we have to look very carefully at how we define the
20 term if our section on racial discrimination is to have
21 meaning in this bill. And there is widespread concern. I
22 have been contacted by the NAACP, among others who have
23 looked at this language. There are very strong feelings that
24 the language of the bill does establish an intent test and
25 would rule out the kinds of consideration of all the

1 circumstances which we allow for in the civil rights -- I
2 mean, the voting rights legislation and in other
3 legislation.

4 So I would urge the Committee to very carefully consider
5 this matter before voting on it, because I think, as I have
6 said all along, you may have one set of circumstances in
7 certain urban areas in the Northeast, where the parochial
8 schools really represent, really are the schools of the total
9 community, a total cross-section of the community, but I
10 would invite you to look at other parts of the country where
11 this is far from true, far from true.

12 I think we have to consider that in whole regions of the
13 country this can be used to make a massive step backward in
14 terms of racial discrimination.

15 Chairman Dole: Mr. Wilkinson, is this your area?

16 Mr. Wilkinson: Thank you, Senator.

17 I think it is important to understand, first of all, that
18 you cannot simply skip from one context to another and say
19 that they are all the same, and the civil rights statutes of
20 the country read very differently. The Voting Rights Act
21 reads one way, and I think that was a very fine compromise
22 there. The Housing Act reads another and this one reads
23 another way.

24 Each is intended to deal with the context that is
25 presented, and I think the school context is somewhat

1 different. It seems to me that the signal that Senator
2 Boren's amendment would send is that by deleting the language
3 in the present bill and indicating expressly that the failure
4 to achieve a certain proportion or quota in the student body
5 is one of the factors that can be considered. There is far
6 too much a danger that courts will latch onto this and some
7 courts will say, well, this is the major factor to be
8 considered, and if a particular private school does not
9 achieve in its student body a certain quota or proportion,
10 then that is going to be substantial evidence of
11 discrimination.

12 My problem with that is that a great many schools may,
13 through no fault of their own, not be able to have their
14 student bodies reflect in precise percentages or otherwise
15 the composition of the surrounding communities. They may
16 have made good efforts, but through no fault of their own
17 they were unable to achieve a certain quota or proportion. I
18 do not think that they should be penalized for that.

19 I think that the problem here is addressing
20 discrimination, and I think this bill does that in strong and
21 emphatic ways, and the premise of Senator Boren's amendment
22 is that it is somehow going to be difficult to prove
23 discrimination under this bill. I just submit that that is
24 absolutely not the case, because as the Senate report last
25 year made plain when this bill was reported, evidence of a

1 single discriminatory act can constitute important evidence
2 of a discriminatory policy.

3 And this is a good, strong, tough, nondiscriminatory
4 provision in this bill. I think we ought to stick with it
5 and not go around and pretend that a compromise which was
6 entirely suitable and appropriate in the Voting Rights Act
7 could be transplanted whole to this school context.

8 Senator Boren: Mr. Chairman, maybe to simplify the
9 question I could divide my amendment into two parts. There
10 may be some members of the Committee who have a feeling about
11 one part and one the other.

12 One part deals with the two sections on quotas. The
13 other amendment is just very clear that we are not here
14 establishing an intent test. It just says -- changes
15 intended to have discrimination, where you have to prove
16 intent, and it just says, intended or has the effect or the
17 purpose or effect of implementing a policy of racial
18 discrimination.

19 That would be a separate issue. Then we could go to the
20 separate question of how do you prove effects, whether or not
21 this language would be appropriate. So if it is in order, I
22 would like to ask consent to first consider just the section,
23 because it is the very same identical language on page 20 and
24 23, where we confront the question directly, do we want the
25 intent or the effects test.

1 Just changing the language "intended to implement a
2 policy of racial discrimination" and change that to say
3 "which has the purpose or effect of implementing," that would
4 make that issue very clear and would not get us into -- then
5 we could go as a second step to taking up the quota, the two
6 quota sections issue.

7 Senator Chafee: Mr. Chairman, I want to speak in support
8 of Senator Boren's amendment here, the one he has just
9 proposed, namely to change the language on page 20, line 23
10 -- line 24, to eliminate the intent, to go to the effect.
11 Let me just say this, Mr. Chairman. The two great civil
12 rights struggles in this country in the past 20 years have
13 involved schools and voting. You can talk about housing and
14 all other kinds of things like this, but these are the two
15 crux issues.

16 And in voting we have decided that intent is not
17 involved. And to set up a parallel system of schools funded
18 by the Federal Government in which discrimination can be
19 practiced -- and you can use all the words you want, saying
20 that you have tight language here, but if they don't have --
21 if somebody can hide behind intent, they can skirt around the
22 issue.

23 And this is really a gut issue, it seems to me, as far as
24 civil rights goes. This is what started the whole business.
25 It was not voting; it was schools.

1 I thoroughly support your amendment, Senator Boren. I
2 certainly hope this Committee will.

3 Senator Boren: Mr. Chairman, I know you are trying to
4 move along. I would just move adoption of that amendment
5 that would apply to page 20 and 23. That is, that one
6 amendment which would change the words "intended to
7 implement" in both of those, from both of those pages, to
8 read "which has the purpose or effect."

9 Mr. Wilkinson: May I make one brief comment, Senator?

10 Chairman Dole: If it is brief.

11 Mr. Wilkinson: The constitutional standard for public
12 school systems as set forth in innumerable school cases for
13 purposes of liability is one of intent, and what the effect
14 of this amendment would do would be to impose a much stricter
15 standard upon private schools than is presently
16 constitutionally or statutorily imposed upon public schools
17 in strike-down tests and tuitions and all kinds of private
18 school practices.

19 That is the effect of this amendment.

20 Senator Boren: Mr. Chairman, I have to say that is a
21 totally incorrect statement of the law. We have had all
22 sorts of rulings in regard to public schools based upon
23 patterns of attendance and all sorts of other factors, in
24 which there has never been the necessity of proving intent on
25 the part of the board to discriminate.

1 There are some decisions, highly controversial, but I
2 certainly do not think you could rule that the busing
3 decisions were based upon intent. I think that is a
4 misstatement of the law.

5 Mr. Wilkinson: Excuse me, Senator. It is not a
6 misstatement of the law.

7 Senator Boren: Well, I think it is a terrible
8 misstatement of the law, and I cannot beleive you would make
9 it.

10 Senator Chafee: Is Mr. Wilkinson suggesting that all
11 these decisions dealing with racial integration of the
12 schools are based upon what is the intent of the local school
13 board?

14 Mr. Wilkinson: What I am saying is that if you read
15 decisions such as Keyes versus Denver School Board --

16 Senator Chafee: Do not trap me with special references
17 like that. Just tell me if the law is clear in this country
18 that there has to be integration of our schools, and there is
19 a host of factors taken into consideration other than merely
20 the intent of the school board; is there not?

21 Mr. Wilkinson: Once liability is proven, the standard
22 becomes in school cases whether it has a disparate effect.
23 But the liability has to be proven initially.

24 Mr. Wilkinson: These decisions have been de jure instead
25 of de facto in regard to schools? Which decisions have been

1 de jure, strictly, and not de facto?

2 Mr. Wilkinson: De jure segregation is the standard --

3 Senator Boren: In Brown. But since then, how many cases
4 implementing have been?

5 Mr. Wilkinson: The standard continues to be one of de
6 jure segregation, and mere racial imbalance, Senator Boren,
7 in the school system is not evidence of liability unless
8 there is some invidious action on the part of the school
9 board.

10 I think this amendment would impose upon private schools
11 a standard which does not apply to the public school system.

12 Chairman Dole: Let's call the roll.

13 Mr. DeArment: Mr. Packwood.

14 [No response.]

15 Mr. DeArment: Mr. Roth.

16 [No response.]

17 Mr. DeArment: Mr. Danforth.

18 Senator Danforth: No.

19 Mr. DeArment: Mr. Chafee.

20 Senator Chafee: Aye.

21 Mr. DeArment: Mr. Heinz.

22 [No response.]

23 Mr. DeArment: Mr. Wallop.

24 Chairman Dole: No.

25 Mr. DeArment: Mr. Durenberger.

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

1 is aye by proxy, Mr. Baucus is aye by proxy.

2 Mr. DeArment: Mr. Chairman.

3 Chairman Dole: No. And Senator Packwood will be no.

4 The nays are ten, the yeas are seven. The amendment is
5 not agreed to.

6 Now, if we could vote on the second half.

7 Senator Boren: Mr. Chairman, I would like to modify the
8 second amendment to use exactly your language. Simply
9 substitute for the two quota sections the following language,
10 which I have quoted exactly from what you wrote in the voting
11 rights law, to say -- this is on page 12 and 25. The two
12 sections that are headed "Quota" would be deleted. The
13 following language, which is an exact quotation from the
14 language you wrote in the voting rights law, will read as
15 follows:

16 "The racial composition of a private institution is one
17 circumstance which may be considered in determining racially
18 discriminatory policy or practice, provided that nothing in
19 this section establishes a right to have members of a race
20 admitted to a private institution in numbers equal to their
21 proportion in the population."

22 In other words, it would be an exact analogy to the
23 language in the voting rights law. You are not establishing
24 a quota, but you are not ruling out the proportion of numbers
25 as one circumstance the courts may consider. I have just

1 taken it exactly word for word from the voting rights law,
2 embodying the very same language in the section, so that we
3 do not bias the courts and tell them they cannot even look at
4 that as one factor.

5 I would move the adoption of that amendment, Mr.
6 Chairman. That would be the new section in place of the
7 other two.

8 Chairman Dole: I would just suggest -- and again, it may
9 have a great deal of merit. I have not had a chance to focus
10 on it. I think there is a difference between the Voting
11 Rights Act and what you propose to do here, plus the fact
12 that we spent I do not know how many weeks trying to work out
13 this language last year with the Department of Education,
14 with the Justice Department, with Senator Bradley, Senator
15 Packwood, Senator Moynihan.

16 It may not be perfect. This may be an improvement. But
17 I would hope at this time we would not adopt the amendment.
18 When we get on the Senate floor -- we will have some time
19 between now and then to focus on it.

20 Mr. DeArment: Mr. Packwood.

21 Chairman Dole: No.

22 Mr. DeArment: Mr. Roth.

23 [No response.]

24 Mr. DeArment: Mr. Danforth.

25 Senator Danforth: No.

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

1 Senator Boren: Aye.

2 Mr. DeArment: Mr. Bradley.

3 [No response.]

4 Mr. DeArment: Mr. Mitchell.

5 Senator Boren: Aye by proxy.

6 Mr. DeArment: Mr. Pryor.

7 Senator Boren: Aye by proxy. Mr. Bentsen is aye by
8 proxy.

9 Mr. DeArment: Mr. Chairman.

10 Chairman Dole: No.

11 Senator Long: Mr. Moynihan is no by proxy.

12 Chairman Dole: On this vote the nays are ten, the yeas
13 are seven. The amendment is not agreed to.

14 I understand the Democrats have a caucus at 11:00
15 o'clock. Is that correct?

16 Senator Boren: That is correct, on the budget, which we
17 really are supposed to participate in.

18 I know the Chairman knows that I am devastated that I
19 might have to leave.

20 Chairman Dole: I know it must break you up to think we
21 may not finish this today. Well, we will finish it today
22 some time, or tomorrow, hopefully. So I think that --

23 Senator Boren: Would we want to try again this
24 afternoon? I guess if we went back in this afternoon --

25 Chairman Dole: We will try to scour up seven members so

1 we can proceed to work on amendments. Maybe we will recess
2 subject to the call of the Chair, because there is another --
3 I assume that will take -- there is a salute to Bob Hope.
4 Maybe we can do it in here. We could get a quorum.

5 [Laughter.]

6 Senator Boren: What is Bob's position on this?

7 [Laughter.]

8 Chairman Dole: I think he is for it, the last I talked
9 to him.

10 [Laughter.]

11 Senator Danforth: Mr. Chairman.

12 Chairman Dole: Yes.

13 Senator Danforth: I do not know what the plans are for
14 finishing up this markup. I have two amendments which I
15 think are important amendments, and looking at my schedule
16 this afternoon, it is totally scheduled. I would hope before
17 reporting the bill out I would have an opportunity to offer
18 my two amendments.

19 Chairman Dole: I think if we can gather up seven people,
20 that Senator Boren and Senator Chafee may have a few other
21 amendments.

22 Senator Boren: I think I have nine or ten. I say that
23 not facetiously. I really do. I have them drafted.

24 Senator Chafee: I could dream up some more. I have five
25 or six, now.

1 [Laughter.]

2 Chairman Dole: We could dispose of those.

3 Senator Boren: Maybe this afternoon after that
4 reception. Then we will have at least until 4:30, it would
5 seem to me.

6 Chairman Dole: We could sort of play it by ear.

7 Senator Boren: I could be available after that.

8 Chairman Dole: We would rather not meet tomorrow, but if
9 necessary we hope to meet tomorrow. I know that sooner or
10 later we are going to report the bill. I would rather do it
11 sooner, but others would rather do it later. Some of us
12 would rather not do it at all.

13 So I would hope -- and I understand. We do not have any
14 quarrel with the Senators who have amendments. We are going
15 to try to keep a quorum here, and I would think that those
16 who have an interest in this bill might want to help us round
17 up a quorum later today.

18 So we will just recess subject to the call of the Chair,
19 because of the Democratic caucus.

20 Senator Chafee: Mr. Chairman, I would point out that the
21 opponents of this legislation have been here. So whatever
22 you lack in quorum has not been due to the opponents failing
23 to show up.

24 Chairman Dole: I do not quarrel with that. I think
25 those who are for it better show up.

AFTERNOON SESSION

(2:30 p.m.)

1
2
3 Chairman Dole: What is the pending amendment, or is
4 there a pending amendment?

5 Mr. DeArment: There is no pending amendment.

6 Chairman Dole: Are there any amendments?

7 Senator Chafee.

8 Senator Chafee: Mr. Chairman, as I understand the
9 purposes of this legislation as set forth on page 3, it is to
10 enhance the quality of educational opportunities, is that
11 correct, Mr. Jones?

12 Mr. Jones: Yes, sir.

13 Senator Chafee: You are from the Department of
14 Education, am I correct?

15 Mr. Jones: Yes.

16 Senator Chafee: You are here to support this legislation.

17 Mr. Jones: Yes, sir.

18 Senator Chafee: Reluctantly, but you are doing it.

19 Mr. Jones: No, sir, not reluctantly at all.

20 Senator Chafee: That is even worse.

21 [Laughter.]

22 Senator Chafee: Mr. Chairman, I think if we want to have
23 equality of opportunity, students from all religions should
24 be admitted to these schools. I do not quite see why if we
25 have a top-notch school in the area being financed partly by

1 federal funds that a youngster should be denied admission
2 because he might be Jewish, for example. And therefore, the
3 amendment that I have provides there shall be no
4 discrimination against a student applicant based upon
5 religion.

6 Now, the purpose of this amendment, Mr. Chairman, is let
7 us have true equality of opportunity. Let us not keep some
8 youngsters out of the schools that present this enhanced
9 education. Let us let everybody have a chance, and no
10 discrimination. I do not think someone should be kept out
11 because they are Baptist, Jewish, Catholic.

12 And so my amendment takes care of that. And I can assume
13 there will be no objection, and it might be accepted, is that
14 correct?

15 Chairman Dole: I would want to hear the administration
16 before I made any judgment. I do not want to hear from them
17 for too long, but --

18 [Laughter.]

19 Mr. Jones: Senator Chafee, we are against an amendment
20 of that nature, principally because currently there is no law
21 or regulation that views religion as a discriminatory
22 element, no federal law whatsoever.

23 Senator Chafee: Let us go through that slowly. Would
24 you start again? Are you saying a public school is entitled
25 to keep out a youngster because they do not like his religion?

1 Mr. Jones: No, sir.

2 Chairman Dole: He is saying just the opposite.

3 Senator Chafee: So if we are going to have equality, in
4 other words, what we are trying to do is have a choice, a
5 choice for Americans. Is that not what it says in line 24,
6 page 3? Is this to be a limited choice?

7 Mr. Jones: No, sir. It is certainly not a limited
8 choice. The principle we are concerned about here is the one
9 of religious freedom, and that there are religions that do
10 ascribe to single-sex schools or single-sex activities within
11 school, and we wish to protect that religious freedom.

12 Senator Chafee: No one is arguing that. That exists
13 now, does it not, Mr. Jones?

14 Mr. Jones: Excuse me, sir?

15 Senator Chafee: Does that exist now, Mr. Jones --
16 religious freedom in the schools, as far as the choice you
17 were talking about?

18 Mr. Jones: We recognize religious liberty within the
19 practices of the various religions of this nation, yes, sir.

20 Senator Chafee: But now we are taking a different step,
21 are we not, Mr. Jones, in providing that the federal
22 government will be active in the subsidization of this
23 education.

24 Mr. Wilkinson: Senator, I think that a very similar
25 amendment came up when the Congress was debating Title VI of

1 the 1964 Civil Rights Act; and as you know, there are
2 prohibitions against religious discrimination in Title II and
3 Title VII and in Title VIII of the Fair Housing Act.

4 And the question was brought up in the debates on the
5 1964 Civil Rights Act about whether religion should be added
6 as a prohibited basis under Title VI, which I think is not
7 dissimilar from this. And that amendment to add religion as
8 a prohibited basis was overwhelmingly defeated, and religion
9 was not added as a prohibited basis under Title VI. And I
10 think the judgment made by the Congress in the 1964 Civil
11 Rights Act is a sound one here, and the reason for not having
12 it was it was felt to add religion as a prohibited basis
13 would simply create a great many gratuitous problems and
14 difficulties for parochial and sectarian schools which were
15 recognized as a very valid and important part of our
16 educational picture.

17 Senator Chafee: Well, Mr. Wilkinson, we heard you argue
18 eloquently this morning that there is a difference between
19 the Voting Rights Act and the Housing Act. From this act we
20 are considering this morning you drew distinctions that
21 prevailed against Mr. Boren, Senator Boren, who was trying to
22 make the comparison; but you prevailed in your arguments.

23 So I see the same differences here. What you are trying
24 to do, what I am attempting to do in this amendment is to
25 provide that all youngsters have the same opportunity. That

1 is the purpose of the act.

2 Now, are you to say that in a neighborhood where there
3 are some Jewish children, for example, it is perfectly all
4 right for the federal government to subsidize the school --
5 in effect, that is what it is; let us not play games; that is
6 what it is -- and be denied admission to that school? Is
7 that what you are espousing?

8 Mr. Wilkinson: No, Senator. No one espouses
9 discrimination of any sort in any context.

10 Senator Chafee: Tell me how this is not discrimination
11 then.

12 Mr. Wilkinson: I think there is a more positive face to
13 put on it, and that is that it is an exercise, a part of the
14 free exercise of religion. And the free exercise clause, it
15 seems to me, which is an important First Amendment value in
16 this country, protects and sanctions sectarian and parochial
17 schools. And I think to introduce an amendment which would
18 risk singling out these schools and precluding them from any
19 of the benefits of this bill does damage to the free exercise
20 values and the First Amendment.

21 Senator Chafee: But what we are trying to do, and we
22 have heard testimony from Secretary Bell, was to provide
23 competition. And as Secretary Bell in an eloquent statement
24 -- I guess he was reading from the President's letter -- said
25 that when many are in the race, the race is run faster, or

1 something to that effect. And if we are going to have these
2 schools that are going to be subsidized by the federal
3 government, we certainly want them open to all.

4 I find it astonishing you would espouse a situation where
5 the federal government would be subsidizing certain schools
6 where some youngsters would be kept out merely because they
7 are Jewish.

8 Mr. Wilkinson: I think the benefits of this bill are
9 going to a wide variety of schools and not simply to
10 religious schools. But I think the constitutional decisions
11 of this country, including *Pierce v. The Society of Sisters*,
12 which is a landmark constitutional case, is given sanction
13 under the free exercise clause and under the rights of
14 parental choice to these kinds of institutions. The Supreme
15 Court has recognized them as valued institutions, and so did
16 Congress in the 1964 Civil Rights Act when it rejected an
17 amendment similar to this.

18 And I do not believe that the Congress which enacted the
19 1964 Civil Rights Act, or the Supreme Court which passed the
20 *Pierce* decision meant in any way to countenance
21 discrimination.

22 Senator Chafee: The *Pierce* decision was in 1926, was it
23 not? What date was it?

24 Mr. Wilkinson: 1925.

25 Senator Chafee: All right. 1925, 55 years ago.

1 Mr. Wilkinson: It has been cited regularly since.

2 Senator Chafee: But this is a new step. You recognize
3 that, Mr. Wilkinson. We are doing something different here,
4 are we not?

5 Mr. Wilkinson: It is an innovative bill, yes, sir.

6 Senator Chafee: It is innovative. It is new. That is
7 what "innovative" means. So we are taking a new step in
8 which we are having federal monies not only go to the parent
9 in the form of a credit, but we are having federal monies go
10 in the form of a check that is being sent to the parent under
11 refundability, is that not correct? It is all accepted
12 here. The Chairman, Senator Bradley, all of the other
13 powers in this committee have determined that that is what is
14 going to happen under this legislation.

15 Will you accept that?

16 Mr. Wilkinson: I just could not speculate.

17 Senator Chafee: Well, if you could not speculate on
18 that, you are not taking much of a chance. So we are
19 embarking on something new, and we are embarking in an area
20 in which we are saying to a segment of our children just
21 because there are not enough of you around here to have one
22 of these splendid schools, you cannot go to it.

23 That is it, is it not, Mr. Jones?

24 Mr. Wilkinson: Senator, I think I have tried to make the
25 point that I do not believe this is countenancing

1 discrimination.

2 Senator Chafee: Explain how it is different.

3 Mr. Wilkinson: In any way.

4 Senator Chafee: Now, Mr. Wilkinson, just explain to me.
5 You have a community in which there is a school built say by
6 Baptists, and most of the neighborhood is Baptist. There is
7 a Baptist school, and the Baptist children go to it. And
8 there are four Jewish children in the community. They are
9 not permitted to go to that school or could not permitted to
10 go that school if those running the school so chose, is that
11 not correct?

12 Mr. Wilkinson: Well --

13 Senator Chafee: Now, if you tell me that is not
14 discrimination, I want to know what is.

15 Mr. Wilkinson: I just think you have to look not only at
16 the history of education in this country, but education as it
17 exists today in colleges such as Yeshiva or Notre Dame or
18 parochial elementary and secondary schools that may or may
19 not grant some kind of preference, have always been thought
20 to have been affirmatively sanctioned by the highest values
21 of our Constitution. And I think to write this bill in
22 another way would simply create a lot of problems.

23 Senator Chafee: No one has to take advantage of this
24 bill, Mr. Wilkinson. You know that. No one has to take
25 advantage.

1 Mr. Wilkinson: But you are singling out these kinds of
2 institutions that may, for reasons of free exercise, have
3 granted some kind of preference and say they cannot take
4 advantage of it, and they are to be excluded from the
5 benefits of this bill.

6 And I am saying taking this one discrete group of schools
7 and singling them out for exclusion from the benefits of the
8 bill would simply do damage to the free exercise of religion.

9 Senator Chafee: But the purpose of the legislation as
10 set forth here, I did not write these purposes. I am not for
11 the bill, in case anyone has not gotten that idea.

12 But you proponents of the bill have said on the bottom of
13 page 3 the purpose is to enhance equality of educational
14 opportunity. And you are keeping some people out from the
15 benefits of this splendid legislation, and I think any piece
16 of legislation involving federal funding should be open to
17 all.

18 Now, there is the argument.

19 Mr. Jones, tell me why that is not right.

20 Mr. Jones: I cannot add much to what Mr. Wilkinson has
21 already said, Senator Chafee. I think one value that has
22 been pre-eminent in this nation is religious freedom,
23 religious freedom. And we are attempting to protect that.

24 Senator Chafee: That exists now, does it not?

25 Mr. Jones: It would not, Senator, if you forced a Jewish

1 school, for instance, to take a non-Jewish student. If it is
2 in the policy of the church that they teach only Jewish
3 students, and you are as a federal official saying that is
4 not good enough for us, we determined that we know better
5 about your religion and discrimination than you, so we want
6 you to take someone not Jewish, that is a violation of a
7 religious principle we hold dear in this nation.

8 Senator Chafee: But we have embarked on something new
9 here. That exists right now, Mr. Jones. You know that.
10 There are all kinds of schools flourishing in this nation.
11 Did you know there was a larger percentage of youngsters of
12 the total pool now in private and parochial schools than
13 there were ten years ago?

14 Mr. Jones: Did I know there was a larger --

15 Senator Chafee: A larger percentage of the available
16 youngsters, in other words, of that population group, the
17 elementary and secondary school youngsters, now in private
18 and parochial schools than there were ten years ago.

19 Mr. Jones: Are you talking about Jewish students?

20 Senator Chafee: No.

21 Mr. Jones: All students attending private schools? The
22 percentage has not changed much over the last five or ten
23 years.

24 Senator Chafee: It is greater now.

25 Senator Moynihan: Will the Senator yield?

1 Senator Chafee: Sure.

2 Senator Moynihan: I used to know the numbers, and I do
3 not any longer, but I know we can find them out in a matter
4 of 30 minutes. I think you will find that about in 1960 the
5 proportion was about 15 percent of the school population,
6 elementary and secondary, in nonpublic schools, of which 90
7 percent were parochial. That dropped to about 10 and was
8 slipping under 10 by the beginning of the '70s, and it has
9 moved up just a little bit and is holding at about 10.

10 Senator Chafee: That is right.

11 Senator Moynihan: I think those are the numbers.

12 Senator Chafee: Right after the war, in the '60s, there
13 was a dramatic increase in the number of children attending
14 nonpublic schools. That has declined. That declined rather
15 precipitously.

16 Mr. Jones: Senator, that is not -- the record I have
17 here indicates in 1965, 13.9 percent of the students were in
18 private schools. In 1975 it was 9.7 percent. In 1979 it was
19 9.9. In 1981 it was 9.8. In 1982 it is estimated to be
20 around 10.1.

21 Senator Moynihan: Yes, those are the numbers.

22 Senator Chafee: That is exactly what I said. There is a
23 larger percentage of the youngsters now --

24 [Laughter.]

25 Senator Moynihan: It is also exactly what I said, that

1 it dropped from about 15 percent to about 10 percent.

2 Senator Chafee: That is what I said. After the war
3 there was a large increase, then there was a dropoff, and now
4 I said if you check the record, there are more youngsters
5 percentagewise in these schools now than there were ten years
6 ago. Is that accurate?

7 Mr. Jones: I do not have 1972 statistics. There are
8 fewer students than there were 17 years ago in 1965.

9 Senator Chafee: We are not talking students; we are
10 talking percentages.

11 Mr. Jones: In percentages there is a smaller percentage
12 now than in 1965.

13 Senator Chafee: But I said 10 years ago.

14 Senator Moynihan: I do not know where you got your
15 notion that this is a phenomenon that happened after the
16 Second World War. That 15 percent figure probably goes back
17 to the establishment of a public school system in the old
18 Confederacy which did not have any. Prior to that I would
19 say if we had statistics in 1840, you would have found about
20 30 percent were in denominational schools. There has been a
21 revival of denominational schools in some denominations that
22 did not have them before. I think the parochial portion of
23 that 10 percent is about 70 percent now, is it not?

24 Mr. Jones: I could not hear you, sir.

25 Senator Moynihan: The parochial portion of the nonpublic

1 schools is about 70 percent?

2 Mr. Jones: Our latest statistic is 63 percent.

3 Senator Moynihan: So it is even lower. It used to be
4 90. There are a number of denominations who have become
5 interested in denominational schools who previously were not.

6 Mr. Jones: About 84 percent of private school enrollees
7 attend religious-affiliated institutions.

8 Senator Moynihan: Yes.

9 Chairman Dole: As I take it, the administration is
10 opposed to this amendment.

11 Mr. Jones: Yes, sir.

12 Senator Chafee: You stand four square for --

13 Mr. Jones: Religious freedom.

14 Senator Chafee: Inequality.

15 Senator Danforth: Mr. Chairman, I am reminded of a story
16 I saw in the St. Louis Post-Dispatch a number of years ago.
17 The Post-Dispatch noticed in some kind of an announcement in
18 the paper for -- there is a orthodox Jewish seminary in St.
19 Louis, and the Post-Dispatch noticed an announcement of the
20 seminary that henceforth it was not going to discriminate on
21 the basis of race, creed or religion. So the Post-Dispatch
22 called up the seminary and said well, this seems like a
23 strange announcement; what is going on? And the seminary
24 said we thought it was a little peculiar, too, but this
25 announcement is required for the purpose of some federal

1 regulation. Therefore, they had to comply with it.

2 I honestly think that this is a very silly thing for the
3 government to do.

4 Senator Chafee: If federal monies are going into this, I
5 think the government has a right to say that any youngster
6 can go. That is what it gets down to. If you are talking
7 equal opportunity, let us have equal opportunity.

8 Senator Moynihan: Mr. Chairman, I do not want to prolong
9 this, but it seems to me that we have at the very least a
10 conflict of constitutional principles. I recognize Senator
11 Chafee has made a point that is owing respect, but the
12 primacy of the free exercise clause in the First Amendment
13 seems to me to be the issue here. It seems to have been
14 recognized over centuries in this country, and I think this
15 would be in violation of the free exercise clause, and I
16 think the Supreme Court would so hold if we were to enact it,
17 and I do not think we should.

18 Chairman Dole: Shall we have a record vote?

19 Senator Chafee: Please.

20 Mr. DeArment: Mr. Packwood.

21 Chairman Dole: No.

22 Mr. DeArment: Mr. Roth.

23 Senator Roth: No.

24 Mr. DeArment: Mr. Danforth.

25 Senator Danforth: No.

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

1 Senator Boren: Aye.

2 Mr. DeArment: Mr. Bradley.

3 Senator Bradley: No.

4 Mr. DeArment: Mr. Mitchell.

5 [No response.]

6 Mr. DeArment: Mr. Pryor.

7 [No response.]

8 Mr. DeArment: Mr. Chairman.

9 Chairman Dole: No.

10 Senator Chafee: Now, Mr. Chairman, I had another
11 amendment which would have --

12 Chairman Dole: The nays are 11 and the yeas are 2. The
13 amendment is not agreed to.

14 Senator Chafee: -- Which would have required equal
15 admission based upon sex. However, having seen the
16 opposition to the last one, I will instead move on to those
17 schools that do have boys and girls, men and women, if you
18 would, male and female, since the whole stress of this act is
19 equal opportunity.

20 And since we want to be able to make a comparison between
21 the public schools and the nonpublic schools, and the federal
22 government has levied a whole series of requirements on the
23 public schools, I think those same requirements should be
24 levied on the nonpublic schools. Thus, you get some true
25 competition. Or otherwise you can remove those requirements

1 levied on the public schools.

2 But it seems to me it is extremely unfair to require our
3 public schools to do this, that, many of them by law here
4 enacted, most of them by regulation in Mr. Jones' department,
5 and not impose the same requirements on the nonpublic
6 schools. For example, Title IX guarantees equal rights in
7 educational opportunity by ensuring female students are
8 assured equal treatment in every area from admissions
9 procedures and athletic programs to student services and
10 counseling. Female employees of educational institutions are
11 also protected.

12 Now, this would not apply to those schools which
13 traditionally only admit males and females, but in the event
14 they admit females, those schools should be required to abide
15 by everything the public schools are on this.

16 Chairman Dole: Mr. Wilkinson, have you comments?

17 Mr. Wilkinson: Well, I think there are some distinctions
18 here that should make us wary of trying to --

19 Chairman Dole: Could I just ask first, does the
20 administration understand the amendment? Have you had a
21 chance to look at it?

22 Mr. Wilkinson: I have not seen it. As I understand it --

23 Chairman Dole: The administration opposes the amendment?

24 Mr. Wilkinson: The administration is opposed to the
25 amendment.

1 Chairman Dole: Now you may proceed, sir.

2 Mr. Wilkinson: There are some distinctions here which
3 ought to make us wary of trying to impose the full
4 requirements of Title IX on this context.

5 First of all, yesterday the committee indicated that the
6 tuition tax credits were not federal financial assistance,
7 and Title IX speaks very directly to federal financial
8 assistance. But I think we are talking about -- when we are
9 talking about tax credits we are talking about something
10 different from grants and different from what goes to many
11 public schools.

12 And it is clear, Senator Chafee, that if a private school
13 accepted federal financial assistance, it would be under the
14 requirements of Title IX. But in the absence of accepting
15 federal financial assistance and where all that is at stake
16 here or at issue here is a tax credit, I do not believe that
17 the full requirements of Title IX ought to be carried over.

18 As you know, Title IX brought with it a great deal of
19 litigation as to what is and is not required, and I think to
20 import the requirements of Title IX is to tangle the
21 institutions up in a web of litigation. And I think before
22 restructuring the practices of private schools, we ought to
23 think more carefully about that. And I would suggest that a
24 tax bill is not the appropriate time or place to restructure
25 the operations of all private, parochial, sectarian schools

1 the way I think the amendment would.

2 Senator Chafee: Would you suggest we refer to another
3 committee -- for instance, the Labor and Human Resource
4 Committee -- where normally Title IX would come up to
5 consider this?

6 Mr. Wilkinson: No. I think the amendment can be
7 appropriately considered here.

8 Senator Chafee: No. You said this was the improper
9 place. Do not tie it on to a tax bill.

10 Mr. Wilkinson: I said this bill is not the proper
11 vehicle to consider an amendment of this sort which would, I
12 think, restructure, potentially restructure the operations of
13 private and parochial schools. And I think that is a very
14 major step to be taking in a tax bill where there is no
15 receipt of federal financial assistance the way Title IX
16 requires.

17 Senator Chafee: Therefore, you would resist the
18 handicapped provisions as well.

19 Mr. Wilkinson: The handicapped provisions are, of
20 course, not in the bill, and we have some concerns about
21 those.

22 Senator Chafee: How about the civil rights part? Would
23 that be out?

24 Mr. Wilkinson: Senator, let me say I think the problem
25 in this area, the problem that this bill has attempted to

1 focus on is that of white segregationist academies which have
2 sprung up for parents and students trying to avoid public
3 school desegregation. That kind of situation is intolerable,
4 and this bill makes a strong statement about that, and I
5 think it well should.

6 But there is no record of a problem in the private school
7 system with these other bases, with these other prohibited
8 bases that these amendments address the way there is with
9 race. And I think it is important not to dilute or shake the
10 focus of this bill's strong statement of nondiscrimination
11 with respect to race by loading on these other elements that
12 would, I think, make quite a bit of difference in the way
13 private schools operate and would subject them to a great
14 deal of unnecessary litigation.

15 Senator Chafee: Mr. Chairman, let me just say this. It
16 is very apparent what is happening here. What we are doing
17 is sponsoring and helping to fund a whole set of schools not
18 to be saddled with the requirements levied on the public
19 school system. That is the position of Mr. Wilkinson. Do
20 not get tangled up with handicapped provisions. Do not get
21 tangled up with equal educational opportunity rights as under
22 Title IX. Do not be tangled up with the other series of
23 amendments which I have, for example, which, for example,
24 deal with the bilingual problem.

25 So this is the very encouragement that worries me about

1 this legislation. It is going to result in skimming. Take
2 off from the public schools the youngsters who are bright,
3 motivated, whose parents have the money, and send them to
4 these schools where there are no problems and leave the
5 public schools with those who are poor, who are black, who
6 are immigrants, and who have language problems. And that is
7 exactly what you are doing, Mr. Wilkinson, in sponsoring this
8 type of legislation.

9 You are not going to impose any of those requirements on
10 the private schools. They will not be saddled with those
11 difficulties. They will not have to wrestle with all of the
12 suits that you mentioned under Title IX. And the law has
13 been fairly well established by those. Leave that to the
14 public schools. Let them worry about it. And that is what
15 is wrong with this legislation. And I find it difficult to
16 understand why it is being supported.

17 Chairman Dole: Senator Moynihan.

18 Senator Moynihan: Mr. Chairman, two points. First, just
19 for the record, Title IX dealing with the prohibition of
20 discrimination based upon sex has a specific section that
21 says educational institutions of religious organizations with
22 contrary religious tenets, this section shall not apply to an
23 educational institution which is controlled by a religious
24 organization if the application of this subsection would not
25 be consistent with the religious tenets of such

1 organization. So that is in Title IX now.

2 But I want to state to my friend from Rhode Island that I
3 do not really recognize the schools he is talking about. We
4 are not talking about Groton Academy. Groton Academy is well
5 endowed. It gets very good students. It has been there a
6 long time and will continue to be there for a long time.

7 In the main, if you want to describe schools in which the
8 predominant population was poor, black and had language
9 problems, you would be describing the parochial schools of
10 Manhattan. And the only difference between those schools
11 today and those schools 150 years ago is that 150 years ago
12 there were not many blacks. They have always been poor.
13 They have always had language problems. They have done
14 nothing but educate successive generations of immigrants in
15 your state as well as mine. And these are schools which are
16 obviously -- nobody gets together to organize one of these
17 schools to make money. They do not do it to avoid public
18 schools. They do it to inculcate their religious values and
19 certain social values which happen to matter to a small
20 percentage of the population but a persistent one.

21 And if I conveyed to Mr. Jones, whose statements I think
22 have been very accurate, I do not think it advances our
23 purpose here very much to talk about the advantages which
24 competition brings to education. This has never been
25 quantified, never been established, and probably never can be.

1 We know very little about the subject, and what we know
2 would suggest that these are not determining factors at all.
3 Most of these schools spend much less money. There is no
4 possibility of the public schools emptying out. Public
5 schools have the absolute attachment as a fundamental
6 American institution of the overwhelming majority of
7 Americans. But these other schools have been here a very
8 long time. Some groups are propounding a renewed interest in
9 religious education, about one child in ten, and it will
10 remain that way.

11 We are providing for diversity and accepting it as a fact
12 of our life. It is a fact, and we are accommodating it.

13 Senator Chafee: Diversity has existed and thrived in the
14 schools of this nation, as you have eloquently stated, for
15 many, many years, but what we are now doing is having the
16 federal government step in with funding in manner that has
17 not taken place in the past. And the logic given is that
18 this will enhance competition, but the truth of the matter is
19 it will be extremely harmful to the public schools of the
20 United States, and to say otherwise is to bury your head in
21 the sand.

22 Senator Moynihan: May I --

23 Senator Chafee: Let me finish.

24 Senator Moynihan: Sure.

25 Senator Chafee: You have spoken here, and I want to hear

1 you again. But this Congress has seen fit to levy on the
2 public schools a whole series of requirements. Right or
3 wrong, they are there. And no one on this committee is
4 suggesting they be removed, whether it is mainstreaming the
5 handicapped or whatever it is. And the courts have spoken as
6 far as the extent you can punish youngsters, whether you have
7 to pass them or not pass them. All of that is language which
8 applies to the public schools, all well and good.

9 But what this administration and Mr. Chapoton, Mr. Jones,
10 and Mr. Wilkinson are coming forward and saying is now we
11 will help fund another group of schools that exist, that have
12 thrived, that have gotten along perfectly satisfactorily
13 without this legislation. But we are providing every
14 incentive in the world within our reach -- and no one thinks
15 this will stop here -- to take out of these schools, the
16 public schools, the bright youngsters, the youngsters with no
17 language problems, the youngsters with no handicaps, and
18 encourage them through these financial motivations to go to
19 the nonpublic schools. And that will work to the detriment
20 of the public schools, unquestionably.

21 Senator Moynihan: May I say then two things? First, let
22 us be clear that Title IX provides an exemption.

23 Senator Chafee: Yes. And I want to remove that
24 exemption.

25 Senator Moynihan: I mean our laws now provide it. It

1 also provides an exemption for the Young Men's Christian
2 Association, the American Legion Boys Nation, if you would
3 like to know more about it.

4 Senator Chafee: Neither of them are entitled to tax
5 credits.

6 Senator Moynihan: The thing I would point out here is
7 this: the idea that we are beginning in this moment some
8 radically new provision of public support to denominational
9 schools simply is not so. I will not go through the long
10 history of this subject, but from the day that we passed the
11 Elementary and Secondary Act of 1965 -- it was on President
12 Johnson's desk on April 11, as I recall. It came there
13 because there had been a coming together of the public school
14 systems and the nonpublic school systems with the
15 understanding that there would be a sharing of this aid. And
16 there was established at that time -- Mr. Jones could give me
17 the right name for it -- I believe it was the Office of
18 Nonpublic School Education. And Mr. Califano abolished it,
19 and Mr. Packwood and I put this bill, and he re-established
20 it and gave a promotion to the man he was about to
21 discharge. But there is an Office of Nonpublic Education.
22 The nonpublic schools share in the widest range of small bits
23 of assistance.

24 The Supreme Court has been very helpful in telling us
25 which ones violate the Constitution and which do not. The

1 Supreme Court, in one of its more elegant distinctions, said
2 that it did not violate the First Amendment's establishment
3 clause to provide parochial schools with maps, but it did
4 violate the First Amendment's establishment clause to provide
5 them with atlases, which are books of maps, or perhaps it was
6 the other way around. I forget. But it was an important
7 distinction, and we should bear it in mind; and it is kept
8 very much in mind.

9 [Laughter.]

10 But the purpose of this legislation is to let the schools
11 share in a very small portion of public assistance. In the
12 main, I think Mr. Jones would agree these schools' per pupil
13 expenditure is approximately one-third that of public schools.

14 Mr. Jones: Yes, sir.

15 Senator Moynihan: Say that louder, would you, Mr. Jones?

16 Mr. Jones: Yes, sir, it is.

17 Senator Moynihan: That is the spirit.

18 Knowing Americans as much as I try to do, I cannot
19 believe the American public is going to rush to gets its
20 children into schools whose average expenditure is one-third
21 that of schools they are in now. Come on. They will not.

22 We are not trying to make these schools more
23 competitive. We are really just trying to let them continue.

24 Chairman Dole: Call the roll.

25 /Mr. DeArment: Mr. Packwood.

1 Senator Chafee: Just a moment. I would like an
2 opportunity to answer Mr. Moynihan, if I might.

3 What this amendment does is provide that in those schools
4 that have female students that they must meet the same
5 requirements in dealing with those female students as the
6 public schools do. Now, there it is. This is the first one
7 of these, of a series of amendments which deal with the
8 requirements levied upon the public schools that apparently
9 we are not prepared to apply to the nonpublic schools. And I
10 find that extraordinarily difficult to understand.

11 Chairman Dole: The Clerk will call the roll.

12 Mr. DeArment: Mr. Packwood.

13 Senator Long: No.

14 Mr. DeArment: Mr. Roth.

15 Senator Roth: No.

16 Mr. DeArment: Mr. Danforth.

17 [No response.]

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: No.

24 Mr. DeArment: Mr. Durenberger.

25 Chairman Dole: No.

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

1 Chairman Dole: No.

2 Senator Chafee: Mr. Chairman, could I ask how many
3 actually voted personally?

4 Chairman Dole: Danforth, no. There were four who
5 voted. I do not know what happened to Mr. Boren. He was
6 here when the roll started. We could just wait. Mr. Bradley
7 will be back in about five minutes, and we can vote again.

8 The nays are 10 and the ayes are 1. We may have to vote
9 on this one again, if we have to keep hunting Mr. Boren. We
10 cannot proceed until one other member is here.

11 Are we trying to find some other member? Senator
12 Grassley, would he like to vote? We are going to try to
13 continue today and tomorrow until we finish this.

14 [Pause.]

15 Chairman Dole: If they would just come over here and
16 sleep over here, it would help, as long as we can count
17 them. They would not have to say anything. In fact, we
18 would prefer it that way.

19 [Laughter.]

20 [Pause.]

21 Chairman Dole: Do you want to offer your next one, John,
22 or do you want to wait?

23 Senator Chafee: I want to have the fullest advantage of
24 attendance that I can have to persuade everyone.

25 Senator Moynihan: Mr. Chairman, while we are at this,

1 there is one bit of drafting in the legislation that troubled
2 me ever so slightly. I wonder if I could get Mr. Chapoton,
3 Mr. Jones, and Mr. Wilkinson's judgment.

4 That is on page 3 in that very section, Section 7, that
5 speaks of this equality of educational opportunity is the
6 policy of the United States. Could the term be better, more
7 explicit?

8 Mr. Chapoton: Certainly, if you think that is stronger,
9 Senator, we would have no problem with that.

10 Senator Moynihan: I will offer that amendment, Mr.
11 Chairman. I think "should" is the conditional tense.

12 Senator Chafee: Where are we, please?

13 Senator Moynihan: In that Section 7 you were speaking
14 of. It is obviously a drafting suggestion. It says, "This
15 legislation should not be used to promote racial
16 discrimination," and I would suggest we say "may not."

17 Mr. Chapoton: That would be fine.

18 Senator Moynihan: If I can just use this moment to speak
19 a little bit, we do have an audience, and they are entitled
20 to something. We could put on color television or something,
21 but we do not have that.

22 I would like to ask Mr. Jones if my impression is correct
23 that the movement to establish separate and private schools
24 in the areas where public schools were segregated, the
25 movement that was very much in evidence after the passage of

1 the Civil Rights Act and drew a lot of attention did not lead
2 to any very enduring institutions, did it? These are all
3 rather convulsive and temporary phenomena in the main. Am I
4 right in that? I do not assert I am. It is simply my
5 impression that I am.

6 Mr. Jones: I believe that you are.

7 Senator Moynihan: Would you not agree, Mr. Jones? It is
8 so nice if you agree com vivo that that is the case. These
9 were rather short-lived phenomena, and there is a growth in
10 religious schools now. It is in the range of decimal points,
11 but it is. And I think this is the practice that the
12 long-dominant 90 percent of the students in nonpublic schools
13 are in Catholic schools, and the other 10 percent were in
14 Phillips-Exeter and the like.

15 That has now changed because a number of denominations,
16 including orthodox Judaism, has become more interested in
17 extending the Yeshiva notion to a full-time schooling
18 notion. And this is true of a number of Protestant
19 denominations.

20 I guess people do not think of Groton as a Protestant
21 institution, but it is. It was founded for that purpose.
22 The more evangelical groups have begun to start school
23 systems here and there. They started them for
24 characteristically philanthropic purposes, the reason they
25 have always done. Very few people ever got into the

1 schooling business to make money. The only exception to that
2 was the city of Manhattan in 1946 when the G.I. bill became
3 available. The State of New York provided 52 weeks at \$20 a
4 week to anyone who had been in the services, and an enormous
5 number of bartender schools showed up on Ninth Avenue, and an
6 amazing number of people took their G.I. bill and their 52-20
7 and went to bartender schools. I once asked one of them what
8 did they teach you there, and they said they teach you that
9 Boston never loses money on ice.

10 Senator Roth, do you want to carry on?

11 Senator Roth: The Chairman says he will be right back.

12 Senator Moynihan: It would be helpful, Mr. Jones, if we
13 could get the statistics in a little compilation. The
14 Commission of Education was established in 1864. It probably
15 began collecting data pretty soon thereafter.

16 Mr. Jones: Yes, sir. We could do that for you. I did
17 submit a letter to Senator Long as followup to our hearing
18 about two weeks ago which indicated what the private school
19 enrollment as a percentage of the enrollment has been in four
20 particular years -- 1955, 1965, 1975, and 1982. I will
21 provide as much historical information as I can find.

22 Senator Moynihan: I would bet you five dollars that if
23 you just give the historical statistics in the United States,
24 you will find a table where all you have to do is xerox it.

25 Mr. Jones: Yes, sir. We will provide that for you.

1 Chairman Dole: Are there any other amendments? We have
2 a fifth one out here in the phone booth.

3 Senator Moynihan: Mr. Chairman, I would offer my
4 amendment to change the word "should" to the word "may" on
5 page 3, line 17.

6 Chairman Dole: Without objection, that amendment is
7 agreed to.

8 Does Senator Boren have any amendments? I guess not.
9 And, Senator Chafee, I am counting him because I know where
10 he is. He is right through that wall. Senator Grassley is
11 on the way -- maybe from Iowa; I do not know.

12 [Laughter.]

13 Chairman Dole: We will finish it. I mean there is no
14 problem with that.

15 [Pause.]

16 Chairman Dole: What do we need, ten to report out the
17 bill?

18 Mr. DeArment: We will need eleven to report the bill
19 out, but to just approve it we need five.

20 Chairman Dole: Pardon me?

21 Mr. DeArment: If we just approve the bill and not report
22 it out as a separate piece of legislation, we can do that
23 with five?

24 Chairman Dole: Cannot do it with four, huh?

25 Senator Moynihan: Where is Senator Chafee?

1 [Pause.]

2 Chairman Dole: Are there further amendments?

3 Mr. DeArment: If we could just adopt again Mr.
4 Moynihan's amendment which would change the word "should" to
5 "may," we have five present, if there is no objection to
6 approving it.

7 Chairman Dole: No. That amendment is approved.

8 Senator Chafee: Which one is that?

9 Chairman Dole: Are there further amendments to the bill?

10 Senator Chafee: Yes. I have some, Mr. Chairman.

11 Mr. Chairman, as presently drawn, what was passed in my
12 absence?

13 Chairman Dole: They inserted the word "may" as opposed
14 to "should."

15 Senator Chafee: This deals with the handicapped, Mr.
16 Chairman.

17 Chairman Dole: You offered that last year.

18 Senator Chafee: That is right.

19 Chairman Dole: It was not adopted as part of the bill
20 last year. I think we worked out something on that last year.

21 Senator Chafee: Well, Mr. Chairman, what mine does is it
22 simply has the same requirements for the nonpublic schools as
23 this Congress imposes upon the public schools.

24 Chairman Dole: Well, if you accept an amendment, I think
25 we did permit an exception for schools lacking special

1 programs and courses and special facilities, specially
2 qualified personnel or an adequate staff to accommodate the
3 handicapped child.

4 Senator Chafee: I am not very anxious to do that, Mr.
5 Chairman. What that does is just let the nonpublic school
6 avoid taking any of the handicapped by not having the
7 specialized students, and then you dump on the public schools
8 the handicapped. And if the idea of this is to foster
9 competition to show what the public can do versus the
10 nonpublic, then they ought to operate on a level playing
11 field. And I see no reason why we should not do the same for
12 the nonpublic as we have done for the public. We have no
13 hesitancy in doing that here, and we are going to spend large
14 sums of money. It is about a billion dollars, and that is a
15 modest estimate. And that hardly involves the refundability.

16 So, Mr. Chairman, I see no reason in the world why the
17 same requirement should not be on both.

18 Chairman Dole: Are you offering that amendment?

19 Senator Chafee: I am offering that amendment.

20 Chairman Dole: And I would offer an amendment to the
21 amendment. Do you have the language there, Don?

22 Mr. Susswein: Yes, Mr. Chairman. The amendment would
23 provide, as last year's bill did, that credits would not be
24 allowed for payments to a school that had an admissions
25 policy that discriminated against handicapped children, but a

1 school would not be considered to have such an admissions
2 policy if it discriminated only because it did not have the
3 special programs and courses, special facilities, specially
4 qualified personnel or adequate staff to accommodate a
5 handicapped child.

6 Senator Chafee: Well, Mr. Chairman, that is a zero. If
7 you do not want to take the handicapped, you do not take them
8 because you do not have the staff. I would be curious as to
9 Mr. Wilkinson, the principal proponent of this legislation,
10 would explain the equality of that provision.

11 The handicapped go to the public schools. The
12 nonhandicapped -- the handicapped cannot go to the nonpublic
13 schools if the nonpublic school chooses not to have the
14 facilities under the amendment as mentioned.

15 Chairman Dole: By the way, I will withdraw that and vote
16 on yours. I can offer mine later.

17 Senator Chafee: Fine. The question then is whether
18 handicapped children will have access to these schools we are
19 putting federal money in, and there is nothing unique about
20 making this requirement. We have already crossed the hurdle
21 about saying funds cannot go to those schools that
22 discriminate on the basis of race; so we certainly should be
23 able to do it to this.

24 Mr. DeArment: Mr. Packwood.

25 Senator Packwood: No.

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

1 Senator Moynihan: No.

2 Mr. DeArment: Mr. Baucus.

3 [No response.]

4 Mr. DeArment: Mr. Boren.

5 Senator Boren: Aye.

6 Mr. DeArment: Mr. Bradley.

7 Senator Bradley: No.

8 Mr. DeArment: Mr. Mitchell.

9 [No response.]

10 Mr. DeArment: Mr. Pryor.

11 [No response.]

12 Mr. DeArment: Mr. Chairman.

13 Chairman Dole: No.

14 Senator Boren: Mr. Bentsen votes aye by proxy, and Mr.

15 Matsunaga aye by proxy.

16 Chairman Dole: On this vote the yeas are 4, the nays are

17 -- just announce the vote.

18 Mr. DeArment: The yeas are 4, and the nays are 11.

19 Chairman Dole: The amendment is not agreed to.

20 Are there other amendments?

21 Senator Chafee: Yes, Mr. Chairman. I have an amendment

22 here which I think you will probably accept, which provides

23 that any school that receives these funds must comply with

24 the compulsory attendance funds in the state in which the

25 school is situated.

1 Chairman Dole: I think that was also discussed last
2 year. It is strongly opposed, as I understand it, by the
3 administration. We adopted that last year.

4 Who in the administration can discuss that amendment?

5 Mr. Jones: We are quite strongly opposed to this
6 amendment.

7 Chairman Dole: Why?

8 Mr. Jones: We have sent you a bill for two years with no
9 language for this because we do not believe it is a proper
10 role for the federal government to be addressing matters of
11 attendance in schools.

12 Secondly, we find that while it is a state role, every
13 state has assumed that role. They do impose some form of
14 attendance rules or regulations in every state. We have a
15 concern that if any language is placed in this bill on
16 compulsory attendance, and it would require the promulgation
17 of federal regulation to enforce that language, we would
18 rather not get into that business of regulation over state
19 law, or in the case of Oregon you will even find that the
20 local school districts determine what may be compulsory
21 attendance for schools in the home.

22 Senator Moynihan: Is it not the case that only about
23 half of the states have state-level compulsory attendance
24 requirements?

25 Mr. Jones: All states have essentially compulsory

1 attendance. What you are referring to is accreditation,
2 certification and licensure of teachers and the like within
3 the institutions. And there are some 23 states that have
4 only voluntary certification standards and things of that
5 nature.

6 Senator Moynihan: I wonder if the Senator would accept a
7 substitute amendment which would simply require the Internal
8 Revenue Service to determine whether a school is validly
9 operating as a legitimate school. And you do not have to
10 know much to know a school when you see one, and I do not
11 think it would be an overwhelming operation. You have to do
12 a 501(c)(3).

13 Mr. Jones: The bill currently includes the 501(c)(3)
14 definition, Senator.

15 Senator Moynihan: Can we have report language or
16 statutory language saying the IRS in determining whether the
17 501(c)(3) applies to a school can also determine that it is
18 legitimately operating?

19 Senator Chafee: Mr. Chairman, I guess you did not listen
20 carefully to the amendment. It said the school has to comply
21 with the compulsory attendance laws of the state in which the
22 school is situation.

23 Now, if the state has no compulsory attendance laws, it
24 does not have to comply. There are no laws to comply with.
25 But it seems to me this is the most modest kind of

1 requirement, unless we are going to just pour out money and
2 forget it.

3 Senator Packwood: Let me ask this. Today those states
4 that have school certification laws, whether they be
5 attendance or otherwise, certify public and private schools,
6 as I understand it, and if they do not meet certain
7 requirements, they are closed. Is that correct?

8 Mr. Jones: There are a few court cases now determining
9 whether the state has the authority.

10 Senator Packwood: I understand that.

11 Mr. Jones: The state would move in that direction,
12 Senator, that is correct.

13 Senator Packwood: And to the extent that the states have
14 those requirements, we do not need this Chafee amendment.
15 The state already attempts to enforce them anyway.

16 Mr. Jones: That is right.

17 Senator Packwood: And to the extent that the states do
18 not have the requirement, it is a nullity, so I do not see
19 that we add anything to it.

20 Mr. Jones: Correct

21 Senator Chafee: Wait a minute. Let us slow up here.
22 The states that can well have requirements levied on the
23 public school system as for compulsory attendance, those
24 would not necessarily apply to nonpublic schools. I am
25 saying that the same attendance requirements that the state

1 levies on the nonpublic schools should be levied on the
2 public schools.

3 Senator Packwood: Even if the state itself chooses not
4 to levy those?

5 Senator Chafee: That is right. If they do not do it, so
6 be it. If it is you do not have to go to school but 120 days
7 or whatever it is, that is up to the state. But if the state
8 has such a requirement on its schools, public schools, then
9 the same thing on the nonpublic.

10 Mr. Jones: Senator, that is already being taken care of
11 in the 50 states by 50 state laws.

12 Senator Chafee: No. I think we have had testimony that
13 some states have no such laws.

14 Mr. Jones: States have compulsory attendance laws. The
15 fact of the matter is they have different standards for
16 accreditation, certification or licensure. That is where the
17 difference occurs, Senator.

18 Senator Chafee: Fine. Let us apply them to nonpublic
19 schools.

20 Senator Boren: All 50 states have compulsory attendance
21 laws?

22 Mr. Jones: yes.

23 Senator Boren: And are all 50 states now applying them?
24 In all 50 states do the state laws apply to private
25 institutions?

1 Mr. Jones: Yes, sir.

2 Senator Boren: They do? And they have the same standard
3 in each case?

4 Mr. Jones: No. There are different standards in the
5 different states.

6 Senator Boren: I realize that. But I am talking about
7 within a state. Within state X is it the case that state X
8 applies the same compulsory attendance standards to public
9 and private schools?

10 Mr. Jones: I cannot go that far because there are
11 disparities in the 50 states. For instance, as I pointed
12 out, in Oregon you will find local school districts will
13 determine, not the state, as to whether you can teach school
14 in your home or not. The permission comes from the local
15 school board, not the state. This appeared in a recent study
16 by the Education Commission of the states. And this is just
17 an example of how complex it can get if we begin to attempt
18 to regulate compulsory attendance from the federal level.

19 Senator Bradley: Did you do this last year? Was this in
20 the bill?

21 Senator Chafee: We accepted this last year. I do not
22 know what the fuss is this year.

23 Chairman Dole: I think what the concern was -- I do not
24 know. The administration did accept this amendment last
25 year. I think the concern was it might start some move to

1 impose restrictions on private schools, including teacher
2 certification requirements, under some guise of trying to
3 meet the minimal truancy laws.

4 Mr. Jones: That is part of it, Mr. Chairman. The other
5 part of it is you may find federal regulations being
6 promulgated that will reach out to attempt to regulate the
7 states to make sure they are doing what they say they are
8 doing. And even in the case of Oregon you will get a federal
9 regulation going perhaps into some private homes, and we want
10 to stay away from that.

11 Chairman Dole: I think Senator Packwood wanted to be
12 heard one more time.

13 Senator Moynihan: While Senator Packwood is on the
14 telephone, may I correct the record, Mr. Chairman, or fill
15 the record?

16 Chairman Dole: Yes.

17 Senator Moynihan: I want to make clear how vigilant our
18 Court has been in these matters. It was in the case of
19 Wolman v. Walton in 1977 that the Court ruled that the
20 provision of textbooks to a denominational school was not
21 direct aid, but the provision of maps was. And direct aid
22 is, of course, prohibited, so no maps.

23 This is what I remembered, and I got it wrong. Whether
24 you can provide an atlas, which is a book of maps, is still
25 -- we are waiting for the next case.

1 [Laughter.]
2 Chairman Dole: Ready for the vote?
3 Senator Chafee: Ready for the vote.
4 Mr. DeArment: Mr. Packwood.
5 Senator Packwood: No.
6 Mr. DeArment: Mr. Roth.
7 [No response.]
8 Mr. DeArment: Mr. Danforth.
9 Senator Danforth: No response.
10 Mr. DeArment: Mr. Chafee.
11 Senator Chafee: Aye.
12 Mr. DeArment: Mr. Heinz.
13 [No response.]
14 Mr. DeArment: Mr. Wallop.
15 Chairman Dole: No.
16 Mr. DeArment: Mr. Durenberger.
17 Chairman Dole: No.
18 Mr. DeArment: Mr. Armstrong.
19 Chairman Dole: No.
20 Mr. DeArment: Mr. Symms.
21 Chairman Dole: No.
22 Mr. DeArment: Mr. Grassley.
23 Senator Grassley: No.
24 Mr. DeArment: Mr. Long.
25 [No response.]

1 Mr. DeArment: Mr. Bentsen.
2 Senator Boren: Aye by proxy.
3 Mr. DeArment: Mr. Matsunaga.
4 Senator Boren: Aye by proxy.
5 Mr. DeArment: Mr. Moynihan.
6 Senator Moynihan: No.
7 Mr. DeArment: Mr. Baucus.
8 [No response.]
9 Mr. DeArment: Mr. Boren.
10 Senator Boren: Aye.
11 Mr. DeArment: Mr. Bradley.
12 Senator Bradley: Aye.
13 Mr. DeArment: Mr. Mitchell.
14 [No response.]
15 Mr. DeArment: Mr. Pryor.
16 [No response.]
17 Mr. DeArment: Mr. Chairman.
18 Chairman Dole: No.
19 You may just read the vote. Do you have another one?
20 Senator Chafee: Yes. I have another amendment.
21 Mr. DeArment: The vote was 5 ayes, 9 nays. Not agreed
22 to.
23 Chairman Dole: In all of these votes the absentees, of
24 course, are entitled to record their vote.
25 Senator Chafee.

1 Senator Chafee: This amendment deals with requiring the
2 schools who will receive this additional funding to comply
3 with all applicable state and federal laws pertaining to
4 bilingual education and the education of students with
5 limited proficiency in English.

6 As you know, Mr. Chairman, my thrust throughout this is
7 to make the requirements on these schools equal so that
8 indeed there will be a level playing field, if you will.

9 The public schools have this requirement to teach the
10 youngsters who come in with in some instances bilingual
11 education and have to deal with those with limited
12 proficiency. And I see no reason why a selected group of
13 schools receiving federal funding should be exempt from this
14 requirement.

15 I think what we want to do is make equal opportunity,
16 equal opportunity for the handicapped. That has been
17 rejected here. Equal opportunity on religion. That has been
18 rejected. Equal opportunity on sex. We did not bring that
19 one to the floor. That was not considered here. But
20 certainly those who have English problems, limited
21 proficiency in English, should have the opportunity to avail
22 themselves of this magnificent opportunity being provided
23 under this legislation.

24 So it is a very simple amendment, Mr. Chairman.

25 Chairman Dole: Is the administration opposed?

1 Mr. Jones: We are opposed.

2 Senator Chafee: Why?

3 Mr. Jones: The reason is the bilingual students are now
4 able to receive support from public schools through Title
5 VII. Title VII is our bilingual education law, and they are
6 receiving assistance through that title, just as they are
7 receiving assistance through Chapter I. You will find
8 bilingual students are able to sometimes qualify for Chapter
9 I funding and the same type of service.

10 Senator Chafee: Chapter I goes to poor students?

11 Mr. Jones: Educationally disadvantaged.

12 Senator Chafee: Economically disadvantaged.

13 Mr. Jones: Educationally disadvantaged, Senator, and
14 certainly a factor in determining that is the economic
15 situation of the family.

16 Senator Chafee: I think as a matter a fact the
17 determination of whether a school is entitled to the Title I
18 fund is based upon the economic survey in the community, is
19 it not?

20 Mr. Jones: Well, it depends upon a formula which depends
21 upon the concentration of the number of educationally
22 disadvantaged children in that school district. But I am
23 saying not only can these students be served under Chapter I
24 funding, they can be receiving services until Title VII, just
25 as the handicapped children receive services through 91.142,

1 89.313 through the Chapter I Act also for state-administered
2 programs.

3 Senator Chafee: Therefore, it is the administration's
4 position to herd all of these children into the public
5 schools.

6 Mr. Jones: No, sir. I think the record even shows there
7 are something like 9 percent of the enrollment in private
8 institutions is of Hispanic origin, and you will find
9 something like 8 percent of the enrollment in public schools
10 to be of Hispanic origin. So I think the record shows fairly
11 clearly there is a large number of Hispanic students
12 attending private institutions now.

13 Senator Chafee: That is not the only group in America
14 benefitting from bilingual education, is it?

15 Mr. Jones: No, sir. That is correct. But what you will
16 find is private institutions are opening their doors to
17 students who need assistance because they are limited in
18 their English proficiency.

19 Senator Chafee: Do private schools receive any of this
20 federal money?

21 Mr. Jones: They receive services in kind, just as they
22 do through Chapter I and 91.142.

23 Senator Chafee: So I do not get the point you are
24 making. You are saying the public schools receive money for
25 these services, and therefore, that is why you can levy that

1 requirement.

2 Do private schools receive no such money? What was
3 Senator Moynihan talking about?

4 Mr. Jones: Private schools, Senator, are able to have
5 their children receive the Chapter I services, by example,
6 through the public school system.

7 Senator Moynihan: They send them over.

8 Senator Chafee: Well, why should not the handicapped
9 children have this access to the nonpublic school?

10 Mr. Jones: The handicapped children receive the same
11 kind of services in kind through the public school system.
12 91.142 provides there must be equal access of the services to
13 students in private schools and handicapped. And you will
14 find that the federal support for 91.142 is about \$31 per
15 handicapped child.

16 Senator Chafee: We have killed that off. This merciless
17 group did in the handicapped children as far as going to
18 nonpublic schools. Let us talk about those lacking
19 proficiency in English.

20 Mr. Jones: The same standard can apply, Senator. That
21 is the reason we are using 91.142 as Chapter I for an
22 example. Private schools who have limited English proficient
23 children in attendance may receive services from the public
24 school that the public school provides for their English
25 deficient children.

1 Senator Chafee: Mr. Chairman, I do not quite understand
2 the arguments presented here. If we are seeking an equal
3 opportunity set forth in the purposes that the child that
4 does not have proficiency in English should have the same
5 opportunity in the private school and the private school
6 ought to provide it, if they do not want to provide it, that
7 is fine. If they do not want to have equal access on race,
8 that is their business. They just cannot get the benefit of
9 this legislation. There is no difference.

10 Senator Moynihan: May I? I had something to do with the
11 drafting of Title I, and I think a federal thing should be
12 made. It is often propositioned, Senator Chafee, which I do
13 not think you are responsive to, in the 1960s the theories of
14 major legislative enactments, what the United States
15 government tried to do was to give educational opportunities
16 to people who previously were not getting them because in one
17 way or another they were very expensive to provide, and the
18 states did not have the money or would not put it up or
19 whatever.

20 Handicapped children are very costly to educate, and
21 bilingual education is a different matter, and there is quite
22 a bit of educational dispute about how useful it is. But
23 certainly in the early stages it is necessary.

24 Now, Title I provisions of this kind are available to
25 students in nonpublic schools by sending them for special

1 treatment and care to a nearby public school. That was the
2 way we worked out the problem of what is direct and what is
3 indirect. This was considered aid to the child and not aid
4 to the school.

5 These schools that we are talking about are not trying to
6 keep out of their schools people who have trouble speaking
7 English because they come from immigrant families. These are
8 not schools for elites. These are characteristically schools
9 -- in most of our major cities these are the schools where
10 the children of immigrants enter American educational life,
11 and many years later they get to Phillips-Exeter on the other
12 end. They start out in private schools, they go through
13 three generations of public schools, and they end up, if they
14 are lucky, in private schools, and then they go on to Brown.

15 But the point is we are not trying to punish these
16 schools. We are just trying to let them play their
17 function. They are not meant to be equivalent schools. They
18 are there because they are different.

19 Senator Chafee: They are different, all right. They do
20 not have any problems. They shunt those off to the public
21 school, and that is what this legislation is designed to do
22 -- increase the difference. Of course they flourish. Why
23 should they not flourish?

24 Senator Moynihan: Flourish?

25 Senator Chafee: Why should not those students have

1 greater proficiency? If you are going to skim, you are going
2 to take the brightest.

3 Senator Moynihan: You are not describing these schools.
4 You are talking about Phillips-Exeter.

5 Senator Chafee: This committee in vote after vote after
6 vote has refused to levy the same requirements on the
7 nonpublic schools it levies on the private schools -- whether
8 it is handicapped, whether it is sex, whether it is limited
9 proficiency in English, whether it is religion. They have
10 decided these schools can determine what they are going to
11 take, and they are going to take the best, and we have seen
12 it.

13 Yes, you can talk about your inner city school that you
14 see. The rest of us see other types of private schools and
15 nonpublic schools. And I am not saying Groton and Exeter. I
16 am saying plenty of schools that we see. What do they do
17 when they have a troublemaker? Out he goes. Rap his
18 knuckles, and if he will not behave, what do we say? There
19 is tight discipline in parochial schools, and three cheers.
20 But if the youngster does not shape up, off he goes to public
21 school because they have that ability to screen, and they
22 have that ability to take the ones they want.

23 What this legislation is doing is setting up two
24 different types of school systems in the country and
25 reinforcing it with federal money.

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

1 Mr. DeArment: Mr. Matsunaga.
2 Senator Boren: Aye by proxy.
3 Mr. DeArment: Mr. Moynihan.
4 Senator Moynihan: No.
5 Mr. DeArment: Mr. Baucus.
6 [No response.]
7 Mr. DeArment: Mr. Boren.
8 Senator Boren: Aye.
9 Mr. DeArment: Mr. Bradley.
10 Senator Bradley: No.
11 Mr. DeArment: Mr. Mitchell.
12 [No response.]
13 Mr. DeArment: Mr. Pryor.
14 [No response.]
15 Mr. DeArment: Mr. Chairman.
16 Chairman Dole: No.
17 Mr. DeArment: The yeas are 4, and the nays are 11. The
18 amendment is not agreed to.
19 Chairman Dole: Senator Chafee.
20 Senator Chafee: I have no more amendments.
21 Chairman Dole: What happened to Senator Danforth? He
22 has a couple of amendments, does he not? He will hopefully
23 float in here soon.
24 Senator Boren: Mr. Chairman, the first amendment I have
25 to offer would be on page 14, line 13, to add a new

1 subsection (e) which would state as follows: "which complies
2 with all state and local health, safety and building codes
3 applicable to the public schools." This simply would make
4 sure, as we are attempting to shift students from the public
5 schools to private schools in states like mine, that we have
6 adequate compliance with the building codes, the health and
7 safety codes.

8 We are very much troubled right now with the growth of
9 institutions in garages, dilapidated buildings. There are
10 all sorts of places where you have schools springing up, 6 or
11 8 or 10 people taught, of course, by people in some cases who
12 probably have not graduated from high school. And they
13 certainly are not meeting all of the health and safety
14 codes. And I think it goes back to what Senator Chafee was
15 saying earlier.

16 Mr. Bell told us the purpose of having tuition tax
17 credits was to have competition, competition between the
18 public and private sector. If you are going to have
19 competition in any kind of rules that I know anything about,
20 you have to have a level playing field, and you have to have
21 the same rules applicable to both.

22 I certainly think in this area it is extremely important
23 that we assure that whatever safety and building codes apply
24 to public schools should apply to the private schools. And I
25 would assume in many states so far they have written their

1 codes to apply to public schools. It would not be a federal
2 standard. It would not require the issuance of federal
3 regulations. It would simply be the matter of applying the
4 applicable state and local, and I emphasize the word "local"
5 as well.

6 If a state leaves those matters up to the locality, we
7 would in no way intrude upon the right of the locality to set
8 what the health, safety and building codes would be. It
9 would apply the same standard to the private schools as to
10 the public schools.

11 Chairman Dole: Does the administration have a position
12 on this?

13 Mr. Jones: We are opposed to this, Senator.

14 Chairman Dole: Why?

15 Mr. Jones: For principally the same reasons as
16 compulsory attendance, in that you find states and localities
17 are already enforcing health and safety codes in schools,
18 public and private; and we believe it should rest there. It
19 is not a federal obligation.

20 Furthermore, we do not believe that the federal
21 government should continue to direct its attention in this
22 nature. It does not do so through any other form of tax
23 deduction it has provided churches or anything of this nature.

24 The federal government does not get into the question of
25 health and safety and building codes for institutions

1 receiving tax deductions, and we do not believe it is proper
2 for them to do so under a tax credit bill.

3 Senator Boren: Have you done a survey of all states and
4 localities to determine that they are applying their health
5 and safety codes to private school buildings?

6 Mr. Jones: The advice I have received is that they are
7 applying them, yes.

8 Senator Boren: And what was the basis of that advice?
9 Have you conducted a survey to determine if the state and
10 local units of government are applying the same health,
11 safety and building codes to private schools as to public
12 schools, or have we no survey on that?

13 Mr. Jones: We have no actual survey. I cannot speak for
14 16,000 school systems in this nation, that is true; but you
15 do have state and local laws to cover health and safety codes
16 for educational institutions.

17 Senator Boren: Mr. Chairman, I think it just goes back
18 to what we have seen before. And we are here opening the
19 federal purse to direct aid to the schools in providing
20 financial incentives for people to attend them, and it just
21 seems to me that I cannot imagine us not at least being
22 concerned enough, not intruding, but at least saying state
23 and local units ought to apply the same building codes to
24 private schools as well as public if they are going to
25 qualify.

1 We are not telling them what these codes should be, but
2 it just seems to me that if we are going to give people all
3 this money and have all of this competition, we should at
4 least require them to meet this. This is just absolutely
5 fundamental in terms of the safety of young people. We are
6 not here dealing with adults. We are dealing with young
7 people.

8 Mr. Jones: We are every bit as concerned about the
9 safety and health of young people as anyone, Senator. What
10 we said for compulsory attendance applies here also. You are
11 eventually going to get the federal government to promulgate
12 regulations to make sure states and localities are beginning
13 to ensure that their health standards, safety standards,
14 whatever, in private schools, private homes that service
15 private schools, and what not. And if you leave it up to the
16 states and localities, it is the appropriate role for those
17 people.

18 Senator Boren: Which receive federal funds.

19 Mr. Jones: They do not receive federal funds. You and I
20 have disagreed on this issue for three weeks, Senator, and I
21 suppose we will continue to; but it is not aid to
22 institutions.

23 Chairman Dole: Do you want to vote?

24 Senator Boren: Yes.

25 Mr. DeArment: Mr. Packwood.

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

1 Mr. DeArment: Mr. Moynihan.
2 Senator Moynihan: No.
3 Mr. DeArment: Mr. Baucus.
4 Senator Boren: Aye by proxy.
5 Mr. DeArment: Mr. Boren.
6 Senator Boren: Aye.
7 Mr. DeArment: Mr. Bradley.
8 Senator Bradley: No.
9 Mr. DeArment: Mr. Mitchell.
10 [No response.]
11 Mr. DeArment: Mr. Pryor.
12 [No response.]
13 Mr. DeArment: Mr. Chairman.
14 Chairman Dole: No.
15 On this vote -- read it.
16 Mr. DeArment: The ayes are 5, the nays are 11.
17 Chairman Dole: The amendment is not agreed to.
18 Are there other amendments?
19 Senator Boren: Yes, Mr. Chairman. I have another
20 amendment.
21 On page 14, line 13, to add a new subsection which would
22 state: "which complies with all state teacher certification
23 and licensure requirements applicable to the public schools."
24 This is in line with the other amendments we have offered
25 to make good on the Secretary of Education's statement that

1 are having a level playing field. And I am very concerned
2 about that. I think that -- I realize -- I have talked with
3 some of the members of this committee about it. There are
4 areas of this country where the parochial schools really do
5 serve a public function where they have excellent standards.
6 I have been in many, many excellent parochial schools. I
7 have talked with the students there. There is a fine quality
8 of instruction.

9 Let me tell you in the south and in the west, in
10 particular -- and again, I think we have to consider we
11 cannot be blind to the regional impacts of this act before us
12 -- there is a garden variety of operations springing up. I
13 think if any single member of this committee could see what
14 is being held out as education in terms of lack of
15 qualifications, there is absolutely no qualification -- I
16 have the list here -- in terms of regulation.

17 We have some 32 states that do not require, at least in
18 certain areas, mandatory requirements in terms of
19 certification for their teachers.

20 Now, I have been a critic myself at times of some of the
21 standards required by certification by various states. I
22 would like to see the day when we put more emphasis on
23 substance and subject matter more than on certain kinds of
24 courses which are being required.

25 I realize there are problems there, but we are opening

1 the door to more and more students attending schools. We are
2 dismantling, at least in certain regions of the country, we
3 are operating on dismantling the public education system; and
4 we are encouraging -- again, I go back to tax credits. Tax
5 credits are used as methods by this committee again and again
6 just like tax deductions to encourage certain kinds of
7 conduct. If you do not -- that is the whole purpose of a tax
8 credit. And if we are going to give a tax credit to
9 something, we encourage people to utilize it, and by
10 encouraging them to utilize it, we encourage them to shift
11 their children to another school system.

12 We are dealing here with in some cases very, very minimal
13 levels of any kind of thing that could pass for educational
14 instruction. And I think that we may need to look ourselves
15 in the mirror and say to ourselves -- let us say, for
16 example, we have a school staffed with people who do not have
17 a grade school education -- is there anything under this bill
18 as it is now written, if I wanted to start a school, a
19 private school, and have it in my backyard or in my garage,
20 because I just put a new roof on my garage, and I am not sure
21 it would meet the health, building and safety codes we have
22 just said do not apply.

23 Let us suppose I do not have an elementary education and
24 let us suppose I do not even have the ability to read an
25 eighth grade level textbook, but I am going to teach. What

1 is to prevent that? What is to prevent that from happening?

2 And I must say I do not think that is such a far out
3 hypothetical in terms of what is going on in some places.
4 Are we going to allow that? Are we going to say we have no
5 responsibility? We have said we do not want to have
6 compulsory attendance. How far will we go? It seems to me
7 we have to have some minimal standards here in terms of
8 making sure that we have teacher certification at least in
9 terms of the instruction of those people participating in
10 those schools, or that at least some standards of
11 certification be established.

12 There might well be some states -- and I know that I have
13 no concern whatsoever that any parochial school that I know
14 of in this area or in New York City that this is going on,
15 but I can tell you in certain parts of the country we are
16 having people who do not necessarily have even high school
17 educations who now present themselves as professors operating
18 schools.

19 Chairman Dole: Senator Moynihan, do you wish to address
20 this?

21 Senator Moynihan: I am just being tedious. I will say
22 again we are not designing a new nation in this legislation.
23 The states of the Union have had educational laws since the
24 1830s or 1840s or when they became states. They have
25 certification requirements as much as they desire. Some

1 desire more than others. They have safety regulations, and
2 they apply to all schools.

3 What we are doing here is not designing a new school
4 system or a new nation. We are trying to compensate for the
5 fact that when federal aid to education began as a general
6 program in the 1960s, it was not found possible for whatever
7 the reasons -- these particular elementary and secondary
8 schools were not included in the direct aid. I think they
9 ought to have been. And I think had we done that, we would
10 be all behind the issue, and we would not be here.

11 Now, at the college and university level is it not the
12 case, Mr. Jones, that the federal government makes no
13 distinction of any kind in its aid to a nominally
14 denominational university or state university?

15 Mr. Jones: Correct.

16 Senator Moynihan: None of any kind. And life goes on.
17 The Constitution is still there. The Supreme Court meets.
18 And there is no evidence whatever of a precipitous decline in
19 universities. As a matter of fact, during this period the
20 shift has been away from private towards public, is that
21 correct, Mr. Jones?

22 Mr. Jones: Yes, sir.

23 Senator Moynihan: Just the opposite of what is being
24 predicted here. And we are simply trying to compensate for a
25 rather muddled piece of work we did in 1965. That is all.

1 We are not designing a new school system or inventing a new
2 country.

3 Senator Boren: Well, Mr. Chairman, I think there are a
4 lot of differences of opinion, with all due respect, and I
5 appreciate my colleague from New York and his scholarly
6 knowledge of this subject. But I think it is a fundamental
7 departure from what has gone on before.

8 The federal government of this country has never provided
9 tuition tax credits to encourage or make financially more
10 attractive the attendance at private elementary and secondary
11 schools versus public. And even in the examples we had
12 before this committee, the Secretary of Education when he
13 testified, the only example he could state, again and again
14 he used the example of Minnesota.

15 The Minnesota system is not like the one we have before
16 us in this bill. It allows for tax credits against the
17 public schools, tuition-type public schools as well, as
18 Senator Durenberger tried to propose.

19 So the one example, the one bit of case study that we
20 fall back on where we have had tuition grants of this kind,
21 we go back to the Minnesota example. It is not applicable to
22 this bill.

23 I just wonder if we have launched on to this legislation
24 without having surveys. We have not had the results yet of
25 the demographic change anticipated. As far as I know, we

1 have not had the results of the makeup of private schools,
2 how they differ according to income level, according to
3 racial makeup. I would bet there are vast differences
4 between the State of New York, the State of Massachusetts,
5 probably the State of Oregon, the State of New Jersey, and
6 what it would be in the State of Texas, Oklahoma or South
7 Carolina. I bet there would be very large differences.

8 I just wonder, do we know -- have you done a survey to
9 find out how many people are teaching in private schools? I
10 would be particularly interested to know if you have this by
11 regional breakdown. Without college degrees how many people
12 are teaching in private schools, let us say in the south and
13 west today? And I would sure like to know how many of these
14 schools started in the last ten years -- that would be very
15 interesting to have -- that do not have college degrees and
16 would not be able to begin to meet the certification
17 requirements of public schools in those states.

18 Do we know? Have we done a survey of the educational
19 qualifications of instructors in private education apart from
20 say the Catholic schools where we have had a long-established
21 very high standard, which I applaud?

22 Mr. Jones: It is my understanding the National Center
23 for Education Statistics is now conducting such a survey.
24 But let me underscore, if I may, sir, that this question of
25 certification standards, particularly as they apply to the

1 certification of public school teachers, is one of the most
2 controversial areas right now as to what in fact comprises a
3 certified teacher.

4 Aside from that, I think it is also important to
5 underscore that private schools do in fact have to some
6 degree a regulatory mechanism against them simply because
7 parents, if they are not satisfied with the certification
8 standards of the teachers in the private schools, they will
9 not send them there.

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1 Senator Long: But some cases one of the reasons we have
2 mandatory attendance requirements is there are,
3 unfortunately, some parents in this country who do not care
4 whether their children have an education or not. We
5 legislated some standards to require the education of
6 children who might have come out of homes where their parents
7 do not care whether they are educated or not. And I would --
8 it seems to me there is such strong evidence.

9 None of the surveys have been done. All of the
10 justification for what we are supposed to be doing, none of
11 it is here. None of the work has been done. Every time we
12 ask for a comment, the answer is, the survey has not been
13 completed, the survey has been begun.

14 I think the members of this Committee would be shocked.
15 We can all see the handwriting on the wall. Whether it
16 happens today, tomorrow, or when, this Committee is going to
17 report out this bill. I do not think the Senate will pass
18 it, because I think we will be more successful on the floor
19 in making more effective use of our time resources than we
20 have in the Committee discussing the bill.

21 But I think the members of this Committee -- and I really
22 mean this -- I think in their consciences, if we could have
23 an accurate survey of how many teachers in the newly
24 established private schools in the South and the West, let us
25 say in the last, let us drive it back for the last three

1 years so that we include the time from which we had the
2 desegregation ruling forward, I think we would be shocked.

3 I am not sure that the consciences of the members of this
4 Committee would allow them to vote for it. I think it might
5 change their opinion on this whole legislation if we
6 conducted an accurate survey on this.

7 They are springing up. It is one of the fastest growing
8 enterprises in our states, trying to establish these new
9 schools.

10 Chairman Dole: Do you want a roll call?

11 Senator Chafee: Mr. Chairman, I was interested in Mr.
12 Jones' comment. It is the caveat emptor theory: Buyer
13 beware. People would not send their children to these
14 schools if they did not have good teachers. That is the
15 surest test of all.

16 That is a very unusual proposal. It is like not having a
17 requirement that there be safety instructors at public
18 swimming pools because if children were drowning parents
19 would not send their children to these public swimming pools,
20 or have no requirements for safety in automobiles because if
21 the parents found out or the drivers found out there would be
22 no need for it.

23 Is that seriously, the law of the marketplace will
24 prevail, is that seriously what you are saying?

25 Mr. Jones: No, sir, that is not what I am saying.

1 Please do not misinterpret.

2 Senator Chafee: Tell us what you did say.

3 Mr. Jones: Senator Boren raised a question of whether we
4 are having certified or qualified teachers in private
5 schools, and I am suggesting, if parents are not satisfied
6 with the quality of the education they are getting in the
7 private school they will not send them there, and there is
8 therefore a sense of self-imposed regulation on the standards
9 of that institution.

10 Mr. Chairman, it is obvious the Administration is opposed
11 to this bill.

12 Chairman Dole: I know you are opposed to the amendment.

13 Mr. Jones: The amendment, yes.

14 Senator Boren: Does the collective community have no
15 right to have any shared concern about the education of
16 people in the society? That is what concerns me.

17 Chairman Dole: I do not want to speed this along too
18 quickly, but we could argue each one of these amendments as
19 long as we want, but --

20 Senator Boren: I am ready to vote.

21 Chairman Dole: All right, let us vote.

22 Mr. DeArment: Mr. Packwood.

23 Chairman Dole: No.

24 Mr. DeArment: Mr. Roth.

25 [No response.]

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

1 Senator Boren: Aye by proxy.

2 Mr. DeArment: Mr. Boren.

3 Senator Boren: Aye.

4 Mr. DeArment: Mr. Bradley.

5 Senator Bradley: No.

6 Mr. DeArment: Mr. Mitchell.

7 [No response.]

8 Mr. DeArment: Mr. Pryor.

9 [No response.]

10 Mr. DeArment: Mr. Chairman.

11 Chairman Dole: No. On this vote, the yeas are --

12 Mr. DeArment: Five and the nays are eleven.

13 Chairman Dole: And the amendment is not agreed to.

14 Senator Boren: Mr. Chairman, I have another amendment,

15 the same page, the same line, adding a new subsection (e):

16 "A school which complies with all state laws applicable to

17 graduation requirements."

18 And I think again this is not meant to be a frivolous

19 amendment. Surely we do not want a situation in which people

20 could have backyard, garden variety schools, taught by people

21 who have not been to elementary school and cannot read books,

22 that can give them a certificate because -- for whatever

23 reason, and call that a graduation certificate, schools that

24 are not accredited by anyone, not visited by anyone of

25 educational authority except perhaps visited by their

1 parents, since the community no longer has an interest in the
2 standards. Sell it like corn flakes and they get a
3 certificate.

4 And surely we are not going to allow people to go around
5 saying they have a graduation certificate when we do not
6 apply the graduation requirements to these institutions
7 applied to other schools in the state. That would certainly
8 not be level-field competition at all.

9 So I certainly think we ought to apply the applicable
10 state laws relating to graduation requirements.

11 Chairman Dole: Do you want a roll call?

12 Senator Boren: Yes.

13 Mr. DeArment: Mr. Packwood.

14 Chairman Dole: No.

15 Senator Chafee: Mr. Chairman, do we not even hear from
16 the Administration on this?

17 Chairman Dole: No.

18 Mr. DeArment: Mr. Roth.

19 [No response.]

20 Senator Chafee: I would like to hear from them.

21 Chairman Dole: We have already started the roll.

22 You may delay it if you want. Go ahead.

23 Mr. DeArment: Mr. Danforth.

24 [No response.]

25 Mr. DeArment: Mr. Chafee.

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

1 Senator Bradley: No.

2 Mr. DeArment: Mr. Mitchell.

3 [No response.]

4 Mr. DeArment: Mr. Pryor.

5 [No response.]

6 Mr. DeArment: Mr. Chairman.

7 Chairman Dole: No.

8 Mr. DeArment: The yeas are five and the nays are
9 eleven.

10 Chairman Dole: The amendment is not agreed to.

11 Senator Boren: Mr. Chairman, I have another amendment,
12 at the same page, same line. It would simply require a new
13 subsection (e) which would require that the schools which
14 receive this aid in the form of the tuition tax credit would
15 comply with all state accreditation requirements applicable
16 to public schools.

17 I suppose, since we are not going to require them to meet
18 any graduation requirements and we are not going to require
19 their teachers to meet any standards otherwise, this would be
20 at least a way of asserting the public's interest and the
21 right of the community to have some interest in their young
22 people receiving an education of at least a minimal quality,
23 so it would mean that when they got a certificate of
24 graduation from this school that an employer looking at that
25 later on -- the student himself, so that we do not deprive

1 the student in the case of a school which does not meet
2 standards, we do not let him be linked into the ignorance
3 which might exist in the home, for example, or lack of
4 interest in education; that we would require minimal
5 requirements, academic requirements, by applying the state's
6 accreditation requirements.

7 And again, it would not apply any federal standard. I do
8 not think that would be appropriate. We simply say that the
9 state's accreditation standards would apply to these
10 institutions, to check the young people to make certain there
11 are minimal standards complied with.

12 Senator Moynihan: Mr. Chairman, may I again make the
13 point that we are not inventing or designing a new school
14 system. These accreditation arrangements are in place
15 everywhere. They vary from state to state, as the states
16 themselves vary.

17 I cannot resist reporting to the Committee, with respect
18 to teacher qualifications, that it has just been learned that
19 Mortimer J. Adler taught at the University of Chicago for 50
20 years without a college degree. He failed the swimming test
21 at Columbia in 1923.

22 Mr. DeArment: I think he also did not have a high school
23 diploma.

24 Senator Moynihan: But he was given an honorary
25 bachelor's degree two days ago.

1 These arrangements are in place in our country, in a
2 school system that is one of the finest in the world,
3 certainly one of the largest, and extraordinarily varied in
4 the public sector and the private sector. And the states are
5 perfectly capable of doing this.

6 Senator Boren, can it be the Governor of the great State
7 of Oklahoma will not maintain these standards, these
8 elemental provisions? You know they will.

9 I propose that we vote.

10 Mr. DeArment: Mr. Packwood.

11 Chairman Dole: No.

12 Mr. DeArment: Mr. Roth.

13 Senator Grassley: He votes no.

14 Mr. DeArment: Mr. Danforth.

15 Senator Danforth: Pass.

16 Mr. DeArment: Mr. Chafee.

17 Senator Chafee: Aye.

18 Mr. DeArment: Mr. Heinz.

19 [No response.]

20 Mr. DeArment: Mr. Wallop.

21 Chairman Dole: No.

22 Mr. DeArment: Mr. Durenberger.

23 Chairman Dole: No.

24 Mr. DeArment: Mr. Armstrong.

25 Chairman Dole: No.

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

1 Senator Danforth: No.

2 Mr. DeArment: The yeas are 5, the nays are 12.

3 Senator Boren: Mr. Chairman, I have some other
4 amendments, but I know Senator Danforth had some amendments
5 he wanted to offer and I do not know what his schedule might
6 be in terms of being able to be here at another time. I
7 would be happy to defer to him at this point if he wants to
8 offer his amendments.

9 Senator Danforth: Thank you very much.

10 Mr. Chairman, I have two amendments to offer. Let me
11 preface the discussion of them in this way. I have supported
12 the tuition tax credit consistently since coming to the
13 Senate. I continue to support it. I will vote to report it
14 out of this Committee.

15 My concern is not with the theory of it, not with the
16 effect of it on public education. I think that is
17 overstated. My concern for the tuition tax credit is very
18 simple to state:

19 Our Government is broke and we are creating a new
20 entitlement program. Now, technically, if we have a
21 refundable program, the refundable part of the program is an
22 entitlement, but the tax part of it operates in the same way
23 as an entitlement.

24 We are going to have an increase in the deficit of a
25 quarter of a billion dollars, a quarter of a billion dollars

1 the first year, half a billion dollars the second, and
2 three-quarters of a billion dollars or so every year
3 thereafter. That is on the projections that we have
4 received.

5 I think it is clear in the past -- and Senator Long
6 stated this this morning -- in previous cases where we have
7 created federal programs we have done so on the basis of
8 economic projections which were the farthest thing from
9 reality. No one guessed the Medicare program would be
10 costing \$53 billion in 1983. I understand when Medicare was
11 first adopted it was projected it would reach \$9 billion by
12 1990. It will now reach over \$100 billion by 1990.

13 Multiply that problem by Medicaid and almost everything
14 else we have gotten ourselves into, and the Government is
15 broke. And the entitlement programs are a hemorrhage and
16 that hemorrhage has not been slowed down in the least.

17 Mr. Chairman, I know it is wonderful to create new
18 programs. It is wonderful, it wins elections. We can create
19 new programs, we can commit ourselves and generations to come
20 to spend more and more money and never pay the bill. But I
21 think that we have an overriding problem in this country. As
22 important as the concept of tuition tax credits is, we have
23 an overriding problem, and that is the Government is busted,
24 broke, bankrupt, flat.

25 So my amendments are two. The first amendment is this.

1 I think that the tuition tax credit should come into effect
2 only when Congress determines how it is going to pay for it.
3 I think that we in the Congress should specifically earmark a
4 way of paying for the tuition tax credit, either by increased
5 revenue or by reduced spending in some other program.

6 So when we get the revenue equal to the projected cost of
7 the tuition tax credit for a period of five years, then the
8 tuition tax credit begins and not before. I would exempt
9 from the spending cut option for financing the tuition tax
10 credit any cuts in other Government programs for education,
11 because I do not believe we should rob Peter to pay Paul,
12 that we should transfer money from public education to pay
13 for private education.

14 Therefore, that is what my first amendment is. It is in
15 written form. The Committee has it. I can explain any of
16 the details, but the basic concept is this: We will have a
17 tuition tax credit when we pay for it and not before.

18 Chairman Dole: Mr. Chapoton, have you any comment on
19 this?

20 Mr. Chapoton: I think we would have to oppose this bill,
21 even though we can be quite sympathetic with the points
22 Senator Danforth makes about the budget in general. This of
23 course is in the Administration's budget. It is accounted
24 for. That is what the budget process is supposed to take
25 into account, that is, overall receipts and overall outlays.

1 And this is a reduction in receipts that we took into account
2 in preparing the President's budget, and it should, we would
3 hope, be taken into account when Congress agrees on the
4 budget resolution.

5 Therefore, I think it is, perhaps "unfair" is the word,
6 to single out this item as having to pay for itself as you go
7 along, because obviously that will make it that much more
8 difficult to pass this program.

9 Senator Danforth: Well, Mr. Chairman, that is right.
10 You have got it. We do not single out anything. Everything
11 is viewed as unfair. That is the great rule of unfairness
12 around here. Everybody is so concerned about unfairness: Do
13 not touch me, it is unfair. It is the great code word,
14 "unfair," in dealing with federal programs.

15 But I would say only this: It is unfair to everyone in
16 this country to be running deficits of \$200 billion and
17 creating brand spanking new entitlement programs to offer the
18 American people with no idea of how we are going to pay for
19 them.

20 Chairman Dole: Let me say this, Jack. I will support
21 your amendment. I tell you why. I think the only vote it
22 will change if this passes is yours. The people who are
23 opposed to this are not opposed to it because of money; they
24 are opposed to it because of philosophy, and they would vote
25 against this until kingdom come if we appropriated straight

1 out the money to pay for it with a sales tax and an increase
2 in the income tax, or a user fee on barges or a gasoline
3 tax.

4 So I will support it, and I am perfectly willing to put
5 it in abeyance until we find the money to pay for it. But I
6 bet it does not change any votes, maybe other than yours,
7 because I know you offer it in good conscience.

8 Senator Danforth: I will vote to report it out, as I
9 said, whether my amendment carries or not, because I am
10 committed on tuition tax credit and I think it is a good
11 idea.

12 Senator Packwood: I am going to vote for it, because I
13 want to back the people who are opposed to this into a corner
14 by making them say they are opposed to it for reasons that
15 are non-financial.

16 Senator Boren: Mechanically, your amendment would say --
17 would the provision take effect -- the law, the tuition tax
18 credit would be written in the law, but would it be with a
19 triggering mechanism? Is that the way it would work?

20 Senator Danforth: Right.

21 Mr. Chapoton: Mechanically, Senator Boren, it would not
22 take effect until a subsequent Act is enacted which pays for
23 it, either by increased federal revenues or reduced federal
24 spending.

25 Senator Boren: So you would have to have, in essence, a

1 follow-on action which would be an earmarking action, either
2 an earmarking, earmarking certain savings from another
3 program or reductions of expenditures or earmarking certain
4 additional revenue sources.

5 Senator Danforth: And specifically designed. You could
6 not say, almost after the fact, well, we have reduced program
7 X and therefore that counts. It would have to be
8 specifically done.

9 Senator Chafee: Mr. Chairman, I know how fast you are to
10 call for the roll.

11 Chairman Dole: I was just going to comment, if I could.

12 Senator Chafee: I hope your comment does not end up with
13 "Call the roll."

14 Chairman Dole: I was going to say this might be
15 consistent with our view in health care for the unemployed.
16 We are advised by the Administration that unless it is paid
17 for it should not be adopted, and based upon the statements
18 the President has made this week, I do not know whether he
19 would oppose this amendment or not.

20 He has indicated a strong, firm position on deficits and
21 no new taxes and no new spending programs. It seems to me we
22 can find the money to pay for it and I think it is a
23 responsible amendment. I do not know how strongly the
24 Administration opposes it.

25 Mr. Chapoton: As I said initially, I think we support

1 the idea. We share Senator Danforth's concern. I am
2 concerned, if we started this, just that you add additional
3 baggage to this amendment. That would be the nature of my
4 concern.

5 It is saying the budget process really does not work, so
6 we have to have a budget process applicable to each separate
7 piece of legislation.

8 Senator Bradley: Mr. Chairman, since we did not do this
9 for the investment tax credit or for the research and
10 development credit, I do not see how I could support doing it
11 for the tuition tax credit, although I understand what
12 Senator Danforth is saying and I do think that some time or
13 another we are going to have to curb some spending programs,
14 whether it is through the tax code or through direct
15 appropriations.

16 Senator Chafee: Mr. Chairman, I was interested in Mr.
17 Chapoton's statement that you add baggage to a program when
18 you require people to pay for it. That is an unusual
19 comment.

20 Mr. Chapoton: Senator, let me say again, in the
21 Administration's budget this legislation was included and was
22 therefore paid for.

23 Senator Chafee: I see. It is a budget imbalance.

24 Mr. Chapoton: No, sir. All outlays and all receipts,
25 this will not make the budget imbalance or not, of course.

1 But the deficits take this into account.

2 Senator Chafee: So you are saying perhaps if we did not
3 pass it the budget would be in balance?

4 Mr. Chapoton: No, the deficit would be smaller than the
5 Administration projects.

6 Senator Chafee: I see.

7 Mr. Chairman, I have a sheet someone gave me here, and
8 just looking at the '88 figures, I see that the tuition tax
9 credit, as these figures show, would cost \$763 million. Is
10 that right?

11 Mr. Chapoton: I believe that is correct, yes.

12 Mr. Brockway: Yes.

13 Senator Chafee: And then with the refundable credit,
14 then would that aid how much did you say by '88? You said
15 very modest.

16 Mr. Chapoton: \$29 million.

17 Senator Chafee: \$29 million. And you and Senator
18 Danforth had quite a discussion on these the other day. He
19 was incredulous as to your figures. Do you stick by that?

20 Mr. Chapoton: Yes. We have given Senator Danforth a
21 letter in background. I am not certain we convinced him, but
22 we have given in a letter on how we arrived at the
23 projections.

24 Senator Chafee: Mr. Chapoton, let us see. '88 -- well,
25 let us take something easy. Let us take '85. In '85 you say

1 the total bill will be \$548 million, is that right?

2 Mr. Chapoton: No, sir -- oh, I am sorry. With
3 refundability, yes, sir.

4 Senator Chafee: Everything together. You would not be
5 prepared to buy everyone in this Committee a lunch -- no, a
6 dinner -- if it were in excess of that by 1985, would you?
7 And I will throw in \$52 million just to round off. Make it
8 \$600 million.

9 Mr. Chapoton: Well, Senator, I think this is similar to
10 the discussion we had a couple of days ago with Senator
11 Danforth. We operate from the best data we have, taking into
12 account some change in behavior, that is some increased
13 enrollment in public schools. And I would think that,
14 particularly since we have reviewed them since that occasion,
15 I would certainly stand by them and stand by them firmly.
16 They are, of course, projections which depend on a lot of
17 unknowns.

18 Senator Chafee: You would not stand firm enough for a
19 dinner, though?

20 Mr. Chapoton: I might stand firm enough for a dinner,
21 depending upon how many Senators were available.

22 Senator Chafee: I think most of us would be available.

23 Chairman Dole: Tonight? We will be here tonight, yes.

24 [Laughter.]

25 Senator Chafee: That is giving you \$52 million leeway.

1 That is nine percent leeway.

2 Well, I think Senator Danforth's amendment makes sense.
3 I notice that Senator Packwood threw out a challenge. He is
4 going to smoke out those people who are against this program
5 and camouflage it behind the inability to pay for it. Well,
6 here is one Senator who has not camouflaged himself behind
7 the inability to pay for it, although that is a fact. So if
8 you have any question on that --

9 Chairman Dole: Are you still firmly opposed to this
10 legislation?

11 Senator Chafee: I am still considering it.

12 Chairman Dole: Are there further comments? I would not
13 want to cut you off. Is there further discussion?

14 Senator Chafee: No. I would like to hear a roll call on
15 this.

16 Chairman Dole: Good.

17 Mr. DeArment: Mr. Packwood.

18 Senator Packwood: Aye.

19 Mr. DeArment: Mr. Roth.

20 [No response.]

21 Mr. DeArment: Mr. Danforth.

22 Senator Danforth: Aye.

23 Mr. DeArment: Mr. Chafee.

24 Senator Chafee: Aye.

25 Mr. DeArment: Mr. Heinz.

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

1 Mr. DeArment: Mr. Mitchell.

2 [No response.]

3 Mr. DeArment: Mr. Pryor.

4 Senator Boren: Aye by proxy.

5 Mr. DeArment: Mr. Chairman.

6 Chairman Dole: No.

7 Mr. DeArment: Mr. Packwood, did you vote aye?

8 Senator Packwood: Yes.

9 Chairman Dole: I am going to vote aye.

10 I do not have the proxies on the others on this vote.

11 Mr. DeArment: The votes to this point are nine ayes and
12 four nays.

13 Chairman Dole: The absentees may record their vote and
14 the amendment is agreed to.

15 Senator Danforth: Mr. Chairman, the second amendment has
16 to do with the projected costs of the program. As pointed
17 out by Senator Chafee, the projected cost of this program is
18 about three-quarters of a billion dollars beginning in 1986
19 and then continuing at about the same figure on out into
20 future years.

21 We have been burned before in creating new entitlement
22 programs and they have ended up costing many, many times the
23 projected costs. This amendment provides that this program
24 will sunset after the cost exceeds \$1 billion per year, and
25 that is really all there is to it, because I think what we do

1 not want to do is be stuck with a program which is truly out
2 of control. And if it reaches a billion dollars then maybe
3 we will want to pass it anyhow, re-enact it anyhow.

4 But what I do not want to see us do is lock ourselves
5 into what amounts to an entitlement program which is growing
6 in an uncontrolled fashion and not be able to do anything
7 about it.

8 I think Mr. Brockway has a suggestion as to how the
9 sunseting would occur.

10 Mr. Brockway: Yes, Senator. If you were to sunset it,
11 it would be far easier to work on a calendar year basis, to
12 see whether on a calendar year basis it exceeded -- or
13 taxable year basis, whether it exceeded one billion dollars.
14 The estimates are it is about \$750 million under the bill the
15 Committee is considering.

16 What it would suggest is, a year and a half after the
17 close of the taxable year is when the sunset would occur.
18 That would give enough time to see how many students were
19 participating in the program and roughly what was involved.
20 You could get a pretty solid estimate as to whether or not
21 you were above or below the billion dollar figure.

22 Senator Danforth: This is really, I think, a fairly
23 generous amendment, in that it takes the figures we have here
24 and adds one-third onto those figures and then provides for a
25 period of approximately one year and a half of getting the

1 numbers in and getting a bead on precisely what the cost has
2 been before the sunseting would occur.

3 Chairman Dole: It would seem to me that, since we have
4 agreed by the previous amendment to pay for it, that we have
5 got to be rather careful on how we proceed.

6 Does the Administration wish to comment?

7 Mr. Chapoton: I wanted to make that very point, Mr.
8 Chairman. It seems appropriate to reconsider the program if
9 the costs are exceeding those projected or the Senators
10 wanted. But to sunset the program automatically is a rather
11 dramatic impact, particularly since the program is, after
12 your other amendment, is financed.

13 But obviously, it goes to -- part of the question is how
14 accurate the projections are.

15 Senator Danforth: It is financed at a predicted level.
16 All you are doing is saying, we think the cost will be X,
17 therefore we are willing to pay X over a five-year period of
18 time..

19 This amendment goes to the question of, supposing the
20 cost is not X, but 3X or 5X; then what do we do with it? And
21 this is simply a way of saying, wait a second, we terminate
22 the program when it gets out of control. If we want to
23 re-enact it, we re-enact it at some point.

24 Senator Bradley: Mr. Chairman, I think that as a matter
25 of tax policy there should be sunseting of most tax

1 expenditures at some point, so we can reconsider the cost
2 factor, you are saying, as well as expenditures generally.
3 You must look at Medicare, the IRA. I mean, how many more do
4 we need?

5 For that reason, I would support Senator Danforth on this
6 amendment.

7 Senator Moynihan: Mr. Chairman, I agree with Senator
8 Bradley and I will support this measure. Might I make the
9 point that I would not anticipate there is going to be any
10 significant movement of children between these relative
11 school systems. It could be that Congress will just add on.
12 That is possible. We have done that sort of thing.

13 But remember, in the event a child leaves a public school
14 and enters a private school, the public sector shrinks. We
15 are proposing a level of credit which would provide about
16 one-third -- oh, no. What is the per-pupil expenditure, Mr.
17 Jones? It has passed about \$1,000 in the United States, has
18 it not, now?

19 Mr. Jones: I am sorry, sir?

20 Senator Moynihan: The per-pupil expenditure in the
21 public schools has passed \$1,000 now, has it not?

22 Mr. Jones: Certainly. The average per-pupil expenditure
23 is in excess of \$2,000.

24 Senator Moynihan: It has passed \$2,000, yes, I am
25 sorry. And in some states, like ours, almost \$3,000.

1 We are proposing in the State of New York a tax credit
2 that is ten percent of the cost in taxes to the public school
3 system, and the rest comes from private sources almost all of
4 the way. So if you think of the public sector as including
5 all levels of government, this system -- I mean, if you
6 wanted to really throw half a dozen major cities in this
7 country into insolvency, just close their parochial school
8 system.

9 But I will vote for it.

10 Chairman Dole: I think technically it is 4:30, but as I
11 understand there is no objection to disposing of this
12 amendment.

13 Mr. DeArment: Mr. Packwood.

14 Senator Packwood: No.

15 Mr. DeArment: Mr. Roth.

16 [No response.]

17 Mr. DeArment: Mr. Danforth.

18 Senator Danforth: Aye.

19 Mr. DeArment: Mr. Chafee.

20 Senator Chafee: Aye.

21 Mr. DeArment: Mr. Heinz.

22 [No response.]

23 Mr. DeArment: Mr. Wallop.

24 Chairman Dole: No.

25 Mr. DeArment: Wallop, No.

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

1 Senator Boren: Aye by proxy.

2 Mr. DeArment: Mr. Chairman.

3 Chairman Dole: No.

4 The absentees will be permitted to vote. I do not know
5 how Senators Durenberger or Symms would vote on this.

6 Mr. DeArment: The yeas are nine, the nays are five.

7 Chairman Dole: The yeas are nine, the nays are five.

8 The amendment is agreed to.

9 Now, it is 4:30. The budget resolution is on the floor,
10 and under the rules, as we convened at 2:30. How long will
11 the hearings take tomorrow, Chuck, all morning?

12 Senator Grassley: Yes.

13 Chairman Dole: What I am going to try to do, if we can
14 -- I understand Senator Boren still has I do not know how
15 many amendments, but some more amendments. We would like to
16 figure out some way to conclude tomorrow. So maybe if we can
17 see how many might be available tomorrow early afternoon.

18 Senator Moynihan: I cannot be here.

19 Chairman Dole: You cannot be here?

20 Senator Bradley: Can we come back tonight, Mr.

21 Chairman?

22 Chairman Dole: Maybe we might do that. We will see how
23 long we are in tonight.

24 Will you be around this evening?

25 Senator Moynihan: Sure.

1 Chairman Dole: Let us explore that option. If not, we
2 will just have to do it next week.

3 [Whereupon, at 4:30 p.m., the Committee adjourned, to
4 reconvene subject to the call of the Chair.]

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