

# TUITION TAX CREDITS

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**HEARINGS**  
**BEFORE THE**  
**SUBCOMMITTEE ON**  
**TAXATION AND DEBT MANAGEMENT**  
**OF THE**  
**COMMITTEE ON FINANCE**  
**UNITED STATES SENATE**  
**NINETY-SEVENTH CONGRESS**

**FIRST SESSION**

**ON**

**S. 550**

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## TUITION TAX CREDITS

THURSDAY, JUNE 4, 1981

U.S. SENATE,  
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT,  
COMMITTEE ON FINANCE,  
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2221, Dirksen Senate Office Building, Hon. Bob Packwood (chairman) presiding.

Present: Senators Packwood, Grassley, Matsunaga, and Bradley.

Senator PACKWOOD. The hearings on the subject of tuition tax credits will reconvene. The first witness we have—excuse me, Chuck, do you have any opening statement?

Senator GRASSLEY. No.

Senator PACKWOOD. We will start this morning with the Honorable T. H. Bell, the Secretary of Education.

Secretary, go right ahead.

### STATEMENT OF HON. T. H. BELL, SECRETARY OF EDUCATION

Secretary BELL. Thank you, Mr. Chairman.

I have with me this morning Al Alford, who is the Acting Assistant Secretary for Legislation and Alan Ginsburg, who works in our analytic systems office and has done a great of analytical work on this proposal.

I appreciate this opportunity to appear before you, Mr. Chairman, and discuss the education aspects of the tuition tax credits proposal.

I'd like to submit for the record, if I may, my longer statement which contains more information on tuition tax credits at the elementary and secondary and post-secondary level and read the shorter version, Mr. Chairman.

Senator PACKWOOD. I should have said, Mr. Secretary, so that all of the witnesses will know. Their statements, in their entirety, will be in the record.

Secretary BELL. Very good.

I appreciate that.

The Reagan administration heartily endorses tuition tax credits and sees these credits as an important expansion of educational opportunities for all Americans.

This is a matter of considerable personal concern with the President—one he has frequently spoken about and one to which he attaches a high priority. The President also feels these tax credits will improve educational standards as well as diversify and enrich educational opportunities for students in both public and nonpublic schools.

I can assure you that the administration is fully aware of the history of debate over this controversial issue, as well as the areas of dispute generated out of proposals coming before the 97th Congress.

And, although the administration has not, as of yet, drafted a measure of its own nor formally endorsed any current congressional proposals, we are committed to financial relief for parents and students selecting private education.

Senator PACKWOOD. Could I interrupt you there, Mr. Secretary, just a moment, to make sure there is no confusion by that statement.

As you are aware, the administration has indicated they are not going to introduce any bill of their own.

Secretary BELL. That is right.

Senator PACKWOOD. And yesterday, Secretary—the Assistant Secretary said that they were perfectly willing to endorse the proposal that Senator Moynihan and I have put in and that Senator Grassley has cosponsored, reserving the right to negotiate about the costs, and the phase-in, and the size of the credits and indeed they were willing to work from our vehicle.

Secretary BELL. Yes; it is my understanding that the matters that you mentioned are the only concerns that were expressed.

The President feels that diversifying options for schooling is crucial to the vitality of American education.

And that private schools are an integral part of that diversity.

For indeed, America has had a strong heritage of private education. This country has had a long history of decentralization of education that has accommodated the diverse values of Americans.

This administration is committed to preserving the pluralism of the American education system. Private schools represent an essential element of that pluralism.

By their diversity, they provide an opportunity for many families to choose among a variety of educational alternatives.

Private schools do provide alternatives. Private schools are often smaller than public schools. This contrast may be especially true of high schools where the average student enrollment in public schools is 758 students compared to 215 students in private high schools.

Many parents prefer the private schools' smaller size and more specialized range of course offerings.

The alternatives provided by private schools have been attractive to many families. After severe enrollment crises in the late 1960's and early 1970's, enrollment in private schools is climbing.

In a time of decline in school-age population, demographers predict a 12-percent increase in private pupils by 1988.

In the last 10 years, public enrollment in the South fell by 6 percent while private school enrollment climbed 31 percent.

In the West, public enrollment declined by 11 percent while private enrollment increased by 19 percent. This administration believes that this growth of private school alternatives is healthy and increases the freedom of families to choose the type of education that will best meet the needs of their children.

In closing, I'd like to thank you, Mr. Chairman, for the opportunity to speak here today.

And while we don't yet have a final proposal as we indicated in our discussion a moment ago, I would like to reiterate our support for a tuition tax credit along the lines of that contained in the Packwood-Moynihan-Roth bill.

I'd be happy to respond to questions.

Senator PACKWOOD. Secretary, I would just like to read one more line in your testimony that you didn't quite get to that is very important and that is that the tuition charges vary with the schools.

Because we are being hit over the head perpetually with the arguments that tuition tax credits are for the elite, for the wealthy, as if every school in this country was Andover.

I am quoting from the Secretary's testimony on pages 2 and 3.

Private school tuitions vary tremendously. In 1979 the median private, elementary school tuition was \$360 per year—\$315 for church-related schools and \$1,222 for non-church-related schools. High school tuition is higher—\$900 for church-related high schools and \$1,400 for non-church-related schools, with a median of \$925 per year.

Yesterday we had a panel of parents, and we will have another panel today of middle-income people.

Many of them single parents, many of them with two, three, four or five children, making from \$12,000 to \$18,000 a year, and attempting to put their children through private schools.

It is imperative that we destroy this myth that the bulk of private schools in this country are solely for the elite.

Secretary BELL. Particularly as you examine the income levels of youngsters from families in the Catholic schools. You find a large number, not just to single out that denomination, but you find a large number of indeed low-income students.

Senator PACKWOOD. I have also seen the figures and the family incomes on those attending Protestant schools and Jewish schools.

And in none of the cases are these on the average. I am sure there are wealthy parents, but on the average none of these schools were set up to charge tuitions of \$5,000 and \$6,000 a year to parents that are making \$100,000 a year.

Secretary BELL. Well, I think that is a good point to make, Mr. Chairman. And I agree with it.

Senator PACKWOOD. Senator Grassley?

Senator GRASSLEY. Thank you, Mr. Chairman.

Secretary Bell, I have a question in regard to whether the administration has any position as when the starting date of this legislation ought to be, anticipating the concern within the administration about certain deficits for certain years in the next 3 years?

Secretary BELL. I think I'd need to defer that to Treasury.

I do know that there is some concern about the total economic recovery program. And it is my understanding that the feeling may be that if the program were to start right away, it would put too much stress on the struggle that we are having to try to bring the budget into balance.

So I know there is some concern there, but to respond rather than beyond those generalities—I wouldn't be in a position to do so.

Senator PACKWOOD. That, Chuck, is one of the negotiable points with the administration. Both whether we go immediately to a \$250 or \$500 credit, whether we phase it in as we have in college,

excluding at first part time and then bringing them in, and then bringing in the graduates.

Whether the percentage is 50 percent or 25 percent is all part of the negotiable items with the administration.

Secretary BELL. It is my understanding that the concepts of this bill, the philosophy of it, that there is certainly no disagreement there.

It is just these technical details that the chairman talked about that we would like an opportunity to work out with you.

Senator GRASSLEY. Thank you, Mr. Bell.

Senator PACKWOOD. Senator Moynihan, do you have any questions for Secretary Bell?

Senator MOYNIHAN. Mr. Secretary, I have a very direct and sensible question to put to you.

You are the principal school officer of our Nation, the Secretary of Education. And as you know, this legislation has been frequently depicted as constituting a threat to public education.

You know we do not think that. If we thought that, we would not be sponsoring the legislation.

We have repeatedly said that the public schools come first, but that the nongovernment schools also have a legitimate claim on resources.

They are public in sense of their sponsorship. May I ask you, sir, do you feel this legislation poses any threat to public education?

Secretary BELL. I don't. And let me just go into that just a little bit.

Senator MOYNIHAN. Please do.

Secretary BELL. I would like to emphasize that my children have attended the public schools. That is my choice. I prefer them. And I have spent all my adult life, Senator Moynihan, working in the public schools, and in the public college and university system.

And so if I have a bias or a slant or a concern it might be over in that direction. I feel that the diversity that I talked about in my testimony, the opportunity for choice, the friendly competition, if you will, will be healthy for all of American education.

I think that the more of that we have, the more we can stay away from a sameness, somewhat dreadful sameness in our offerings, and the better off we are going to be.

I don't share that concern. Many of my colleagues are saying to me, "Are we disappointed with you on where you are coming on this tuition tax credit bill. Of all people, Ted Bell. We didn't ever think we would see you coming on like you are in that regard."

And I want to express unequivocally that I don't think that this is going to harm the public schools. We have splendid public schools. There are some that are having problems, but so are private schools having difficulties.

And I think that the public schools are going to do well. They are going to continue to flourish and develop and improve in their effectiveness.

And I just don't share that concern.

Senator MOYNIHAN. May I say, sir, I believe this is a profoundly important moment in the history of American education.



You are the first Commissioner or Secretary of Education ever to have spoken so to a congressional committee or spoken to any setting to accept the legitimacy of the nongovernment schools.

The public schools come first. You would agree with that?

Secretary BELL. I surely do.

Senator MOYNIHAN. But these other schools have a place in our system, and they were here before the public schools.

We have always had a plural system. Have we not?

Secretary BELL. I just traced the history of American education. That is what it has been. That is what it ought to continue to be.

And I know I'm taking my lumps over this issue. But I believe what I believe about it, and I think that our future history will look back at this time and will not bear out these fears that are being expressed so vigorously.

Senator MOYNIHAN. Well, I thank you very much, sir. Senator Packwood, Senator Grassley, and I have tried to say that we hoped we could use these hearings as much as a teaching process as an advocacy one, and the one lesson we wish to teach most firmly is the notion that we are not threatening any other institutions.

And that education will be strongest in our cities, in our Capitol, and the Nation when all those concerned with it work together.

That is how we got the first significant Federal aid in 1965. All the groups now opposing one another came together for that one moment and we proved that when they are together we have some real force in the city.

And when we are divided, well—

Well, I want to thank you very much, Mr. Secretary.

I appreciate this, sir.

Secretary BELL. Thank you. I appreciate the chance to speak.

Senator PACKWOOD. And I also want to thank the administration for sending the Secretary.

You recall what happened when we had the hearings before on this bill.

Secretary BELL. The reason I had a particular desire to appear personally and not send a staff member is I didn't want to give a signal that I was waffling on this, as many are speculating that maybe this administration may be or the Secretary maybe.

Senator MOYNIHAN. May I say, sir, you have sent the signal you intended.

And, as the chairman has raised it, we will recollect to those who are regular attendants at these hearings that in the last administration when the Secretary of Health, Education, and Welfare was invited, he couldn't come. The Under Secretary couldn't be found. There were no Assistant Secretaries available. There was something at that time called an Assistant Deputy Assistant Secretary. None of them could be found.

And some poor fellow who did the lobbying up here was sent in to say, "Well, I'm sorry, I don't know much about the bill, but I don't think we're for it. But I'm not sure we are against it. And I'm awfully busy. Can I get out of here fast?" [Laughter.]

Senator PACKWOOD. Mr. Secretary. Thank you very much.

[The statement of Secretary Bell follows:]

For Release Upon Presentation

Statement of  
T. H. Bell  
Secretary of Education  
Before the  
Subcommittee on Taxation and Debt Management  
Committee on Finance  
United States Senate  
June 4, 1981

Dr. Bell is accompanied by:

Albert L. Alford, Acting Assistant Secretary for Legislation

Alan Ginsburg, Director, Analytic Systems, Office of  
Planning and Budget

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

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify before you this morning to discuss the education aspects of tuition tax credits.

The Reagan Administration heartily endorses tuition tax credits and sees these credits as an important expansion of educational opportunities for all Americans. This is a matter of considerable personal concern with the President-- one he has frequently spoken about and one to which he attaches a high priority. The President also feels these tax credits will improve educational standards as well as diversify and enrich educational opportunities for students in both public and non-public schools.

I can assure you that the Administration is fully aware of the history of debate over this controversial issue, as well as the areas of dispute generated out of proposals coming before the 97th Congress. And, although the Administration has not, as of yet, drafted a measure of its own nor formally endorsed any current Congressional proposals, we are committed to financial relief for parents and students selecting private education. The President feels that diversifying options for schooling is crucial to the vitality of American education and that private schools are an integral part of that diversity. For, indeed, America has had a strong heritage of private education.

## I. The Condition of Private Elementary and Secondary Education

Let me begin by discussing issues in private elementary and secondary education. This country has had a long history of decentralization of education that has accommodated the diverse values of Americans. This Administration is committed to preserving the pluralism of the American education system. Private schools represent an essential element of that pluralism. By their diversity, they provide an opportunity for many families to choose among a variety of educational alternatives.

Private schools do provide alternatives. Private schools are often smaller than public schools. This contrast may be especially true of high schools where the average student enrollment in public schools is 758 students compared to 215 students in private high schools. Many parents prefer private schools' smaller size and more specialized range of course offerings. — | ⇒

While there are many excellent public schools, it is difficult for any one school system to meet all the needs of its students or to be consistent with the values of all parents. Many view public schools as inadequate in providing an orderly environment in which basic skills can be taught. This view has been reinforced by the much publicized declines in scholastic achievement test scores and other indicators of academic performance. Clearly, public schools are capable of reversing these declines as they are beginning to do in the early grades. However, there will always be many parents whose educational values differ from those of the public school system. The views of such parents should be respected and their freedom to choose should be supported, especially when this choice might increase the academic achievement of their children.

The alternatives provided by private schools have been attractive to many families. After severe enrollment crises in the late 1960s and early 1970s, enrollment in private schools is climbing. In a time of decline in school-age population, demographers predict a 12 percent increase in private pupils by 1988. In the last 10 years, public enrollment in the South fell by 6 percent while private enrollment climbed 31 percent. In the West, public enrollment declined by 11 percent while private enrollment increased by 19 percent. This Administration believes that this growth of private school alternatives is healthy and increases the freedom of families to choose the type of education that will best meet the needs of their children.

Although the number of parents choosing private schools for their children has risen, the opportunity of many families to send their children to private schools is limited by tuition. Private school tuitions vary tremendously. In 1979 the median private elementary school tuition was \$360 per year--\$315 for church-related schools and \$1,222 for non-church-related schools. High school tuition is higher--\$900 for church-related high schools and \$1,400 for non-church-related schools, with a median of \$925 per year. These sums are substantial, especially for families with many school-age children. Thus, a family with four children, two in elementary and two in high school, would pay \$2,430 in church-related schools and \$5,244 in non-church related schools.

The barriers to enrollment that private school tuitions represent differ for different regions of the country. Tuitions are substantially higher in the South and the West than in the Northeast and North Central States, especially for elementary schools. Private elementary school

tuition is \$250 and \$209 per year in the Northeast and North Central States respectively; \$600 and \$540 per year in the South and West respectively. This pattern probably reflects the dominance of Catholic elementary schools in the Northeastern and North Central States. Regional tuition differences are not so marked in secondary schools where, in 1979, tuition averaged \$892 and \$900 in the North Central and Northeastern States and \$1,000 in both the Southern and Western States.

The costs of attendance that prevent some families from sending their children to private schools clearly have different effects on different groups of Americans. Black children have not attended private schools to the same extent as white children. While blacks comprise 15 percent of all children enrolled in school, they comprise only 8 percent of students in private schools. Conversely, white children comprise 82 percent of children in school, but 90 percent of private school children. In 1979, white children attended private schools at more than twice the rate of black children. Families with higher incomes are also much more likely to be able to send their children to private schools: rates of private elementary school attendance increase from 4 percent for families with incomes under \$10,000 to 19 percent for families with incomes over \$25,000. Clearly, many families who want to send their children to private schools find the costs of private school prohibitive.

There is a demand for private school education and a need to assist families to benefit from it. The current Federal role was not specifically designed to address these needs although there have been some efforts to ensure the access of private school students to Federal programs if they

otherwise meet eligibility criteria. Although good data on all Federal programs are not available, we do know that about 4 percent of all Title I participants attended private schools in 1979. In 1980, about 10 percent of the children in schools receiving funds under Title IV-B (Libraries) attended private schools; 6 percent of the children in schools receiving funds under Title IV-C (Innovation) attended private schools. In 1977, children in more than 87 percent of religiously affiliated non-public schools and 51 percent of other private schools participated in Federal programs. Some indirect Federal support is also provided to private school parents in the form of the charitable deduction from the income tax. However, no Federal program is directly aimed at strengthening these schools' ability to provide educational choices nor to increasing the ability of families to take advantage of these choices.

I will now review some trends in postsecondary education that relate to the need for some form of tuition tax credit.

## II. Reducing the Financial Burden of Postsecondary Education

Compared to the elementary and secondary levels, Federal financial assistance to postsecondary students is quite large. The Federal government currently provides postsecondary students with a total of over \$15 billion a year. Clearly much has been accomplished as a result of this effort.

The tax credit is sometimes considered a simpler alternative to student aid, for promoting educational opportunity, relieving some of the burden of paying for postsecondary education, and helping institutions of higher education make it through difficult times. Before deciding

what type of tax credit is the appropriate solution to these problems, we should first take a look at the current situation: who is attending college, what are the current sources of student assistance, and what is the financial condition of postsecondary education.

### Trends in Enrollment

Over the last decade, total enrollment in higher education increased significantly. In 1970, about 8.6 million students were enrolled; by the fall of 1980 this enrollment had increased to 12.1 million. In 1980, 42 percent of all students were in public four-year colleges, 20 percent were in private four-year colleges, 36 percent were in public two-year colleges, and 2 percent were in private two-year colleges.

In addition, in 1978 some 1.8 million students were enrolled in non-collegiate postsecondary schools. These enrollments were distributed about 26 percent public and 74 percent private. Enrollments in these schools had increased 11.5 percent since 1974.

Many reasons could be offered for the increases in enrollments during the 1970s: an increase in the number of people interested in postsecondary education (including many people beyond the traditional college age); the expansion of colleges, particularly community colleges, making it easier for people to attend; the failure of the economy to provide jobs for people without postsecondary education; and the expansion of student assistance programs designed to make some form of postsecondary education available to everyone.

College enrollments began to level off in the mid-1970s. By the early 1980s, they were expected to decline because of the decrease in the number



of people in the traditional college-age population. But up to this point no decline has occurred: enrollments underwent a 2.8 percent increase between 1978 and 1979 and then a 3.2 percent increase between 1979 and 1980.

Of major importance in thinking about tuition tax credits is the income distribution of college students. Despite the presence of the student aid programs, sample surveys continue to reveal that college attendance increases with family income. According to Census Bureau data, 46 percent of all 18- to 24-year old members of families with incomes over \$25,000 in 1979 were in college; this was over three-and-one-half times the rate of attendance for 18-to-24-year old members of families with incomes under \$10,000. It stands to reason that, without student aid, enrollment rates (particularly for the lower-income students) would not be as high as they are today.

#### Current Student Assistance Programs

Any analysis of the need for a tuition tax credit for postsecondary education should be framed in terms of the total Federal, State, and private effort going into student assistance. Before deciding what type of tax credit is needed, we must first consider the level of assistance already provided.

At present, the Department of Education runs six major student aid programs:

- o Three grant programs--Pell Grants, projected to cost \$2.5 billion in FY 1982; Supplemental Educational Opportunity Grants, budgeted at \$370 million; and State Student Incentive Grants, for which a \$77 million Federal contribution will be matched on a dollar-for-dollar basis by the States.
- o The College Work-Study program, which will distribute \$550 million in Federal funds in FY 1982.

- o Two loan programs -- in 1982, the Federal government is expected to contribute \$286 million in new capital for National Direct Student Loans. Combined with the money in institutional revolving funds, this will make a total of \$750 million available to students. In the Guaranteed Student Loan program, the Federal government guarantees the loans made by private lenders and pays the interest on the loans while the students are in school, the "special allowance" to the lenders, and the cost of claims resulting from death, disability, and default. For 1982, we project that total GSL volume will be about \$5.7 billion.

In all, the student aid programs are a very major part of the Department's effort to assist education. In 1982, the \$5.6 billion allocated to these programs will consume about 45 percent of the entire ED budget. Counting the total volume in the GSL program, \$11.6 billion will be made available to students to help defray the costs of postsecondary education.

But assistance from the Department of Education is not the entire story. The Veterans Administration provides some \$1.7 billion in student benefits annually and the Social Security student benefit accounts for another \$2 billion. Indirect benefits accruing to college students through the tax system (because of the deduction for dependents and the exemption of scholarships and fellowships) amount to some \$2.6 billion. The States now provide about \$835 million a year in need-based scholarships and higher education institutions themselves provide an estimated \$1.5 billion in financial assistance to undergraduates. Finally, some smaller amount, for which we have no estimate, is made available through private scholarship programs.

It is clear that the Federal government is already doing a lot to promote access and choice in postsecondary education. Yet the current programs are complex and have many administrative problems, both for families and for the Federal government. Some families may find tuition tax credits a simpler alternative to the existing programs.

### The Financial Condition of Postsecondary Institutions

Many people in this country--and I am one of them--are very concerned about the financial strains on colleges and universities. Like other institutions, the colleges have been battered by inflation in the costs they must pay for goods and services. In addition, they are threatened by the impending decline in the number of traditional college-age students. Some experts have predicted widespread college closings in the coming years. Insofar as this will threaten the goal of equal educational opportunity, it is a concern of the Department.

### III. Conclusion

In closing, I would like to thank you for the opportunity to speak here today. The issues I have discussed are critical to the deliberations now taking place in the Administration on tuition tax credits. While we do not yet have a final proposal, I would like to reiterate our support for a tuition tax credit along the lines of that contained in the Packwood-Moynihan-Roth bill.

I will be happy to answer any questions.

Senator PACKWOOD. Next, we are going to have a panel of parents. And they will have 3 minutes apiece in their statements.

The reason we have asked them to come is that apart from these parents, almost everyone else who is testifying has a professional, a trade association, or other interest in this bill.

It is very seldom we get some specific witnesses who indeed live with this problem day by day.

So I would like to call those parents, Bill Sadlier, of Annapolis, Mona Hanford, of Bethesda, Jacob Friedman, of New York, and Juanita Ramirez, of Irving, Tex., Wallace Tolman, of Manassas, and Joseph Horton, of Leesburg.

I want to thank all of you in advance very much for taking the time to come.

Do you want to testify in the order that you are on the panel. Or have you worked out some other order?

We will start with Mr. Sadlier. Do I pronounce it right.

Mr. SADLIER. Sadlier.

Senator PACKWOOD. Sadlier. All right.

#### STATEMENT OF BILL SADLIER, ANNAPOLIS, MD.

Mr. SADLIER. Thank you, Mr. Chairman, for this opportunity to speak. I believe that every child has a right to receive an education that will provide the basic skills to lead a fruitful and productive adult life.

More importantly, it is the right and responsibility of every parent to see that his or her child receives an education that is compatible with the parent's philosophy of life.

Some philosophies of life encompass the whole man. For instance, I happen to be a born again Christian.

And besides believing in Jesus Christ as my Savior and Lord, I believe that the Bible is the word of God. I believe that I have a responsibility to love God, and I believe that I also have a responsibility as a parent to teach these things to my children in every aspect of their life.

In fact, in Deuteronomy in the Bible, it says that we are to teach our children these things when we sit at home, when we walk along the way, when we lie down, and when we get up.

So it really encompasses every part of our life, including our children's education.

Now I recognize that not every American shares my personal religious convictions. In America we live in a pluralistic society. We can worship God in any way we please, or if we choose, we don't have to worship God at all.

But the problem is, when it comes to schools, because of my personal convictions I can't send my children to the public school that is across the street from my house.

I can't send my children there because that particular school can't teach the children that God created the universe.

I can't send my children to that public school because they can't teach the unchanging law of God. The only thing that can be taught there is the ever-changing morals and standards of our society. Public schools teach that mankind can solve all problems, while the Bible teaches that man is sinful, corrupt, and ruins everything.

Public schools teach about science as if it were the savior of the world instead of the discoverer of God's creation.

Math can't be taught as showing the orderliness of God.

So basically, I can't send my children to the public school because of the difference in philosophy. Now my wife and I pay \$1,900 tuition, that is what we will be paying next year, plus transportation.

And we have done this for 6 years. But with inflation, and another child coming up in another year, that will be going to school, I am not sure that we can continue.

If we can't afford to pay the tuition two things will happen. My right to educate my children will be taken away from me and given to the State of Maryland.

Second, the Anne Arundel County school system of Maryland will have three more children at a total cost of \$6,326.91 per year. That money will have to come out of an already barebones school budget.

In conclusion, the tuition tax credit will provide at least some relief for parents like myself who can't in good conscience send their children through the public school system.

Failure to pass the tuition tax credit bill may avoid some reduction in funds to public schools, but it certainly will add to the ever-increasing cost of public education.

Thank you.

Senator PACKWOOD. Thank you very much.

Mona Hanford.

#### STATEMENT OF MONA HANFORD, BETHESDA, MD.

Ms. HANFORD. Yes; thank you, Senator, for allowing me this opportunity.

Our children are presently enrolled in private schools. My husband and I have made this burdensome financial commitment after much careful consideration, and after trying public schools.

To us, developing the mind, body, and spirit is a once-in-a-lifetime opportunity. Having in its past to a generation that left Russia, before the revolution, my family lost money, land, and title.

I grew up to appreciate the value of education, a living legacy. Education cannot be stolen, left behind, or appropriated. We turned to private education because it is the only avenue available in this country which allows for the total development of mind, body, and spirit.

Religious and moral standards help develop a sense of discipline and duty to God and country. They point out the fullness of life, thus avoiding the materialistic attitude which is so pervasive today.

A knowledge of genetic engineering without recognition of the value of creation is dangerous.

A knowledge of nuclear physics without moral commitment could be catastrophic.

A knowledge of economic without human compassion for social safety is unacceptable.

The sacrifices made by parents such as myself to send their children to private school are becoming intolerable.

We are willing to make sacrifices, but it is coming to the point where middle-class America may no longer have the option, even with sacrifice.

In the last 5 years, tuitions have gone up, to the point where they represent more than 25 percent of our after-tax income. I work full time to help offset educational costs.

Without tuition tax credit, private schools will be the bastion of the rich and the few on scholarship. Please help working Americans provide a choice for a strong, moral education for their children.

Senator PACKWOOD. Thank you very much.  
Jacob Friedman.

#### STATEMENT OF JACOB I. FRIEDMAN, NEW YORK, N.Y.

Mr. FRIEDMAN. Good morning, Mr. Chairman, and members of the committee.

Thank you for giving me the opportunity to appear before this distinguished committee.

My name is Jacob I. Friedman and I reside in the Midwood section of Brooklyn, N.Y. As a parent of three children who attend Jewish elementary schools, known as yeshivas, I am active in various parents' groups.

These parent groups are comprised of individuals drawn from a broad spectrum of income levels. I am here today to briefly describe the urgency of the Packwood-Moynihan Tuition Tax Relief Act of 1981 to us.

We feel choked and we feel neglected.

We feel choked by the powerful forces of inflation and taxation, which drown our ability to better our station in life.

We would like to achieve the same level of accomplishment as our neighbors have achieved—but we can't.

In addition to paying for our own children's education, we must help pay for the education of our neighbors' children. We recognize the need for the public school system and gladly support it.

Yet we read in the newspapers about the high per capita cost of public school education. Aren't we saving the public school system great sums of money?

Come September, in addition to paying for the education of my neighbors' children, I will pay close to \$4,000 a year of my aftertax earnings for my three schoolage children, and soon my little one will be running off with his schoolbag.

To pay for all this, I work late and get home when my neighbor is playing after-dinner stick ball with his 9-year old; and often too late to do anything but ask my kids—did you do your homework?

We also feel neglected. I have with me a copy of the Internal Revenue Code in which one can find almost any form of tax incentive the mind can conjure up. Singularly lacking is any form of recognition dealing with children's education.

Congress recognizes tax-exempt bonds, tax shelters, and tax-deferred pension plans. We parents feel neglected. We are also stimulating the economy. We are giving our country new taxpayers who will be better educated and hopefully high-bracket taxpayers. Don't neglect us.

Please recognize our contribution to society by giving us a tax credit the way you give tax credits to movie films and alcohol mixtures.

Thank you.

Senator PACKWOOD. You touch on a very sensitive point with this committee.

Indeed, this committee is not adverse to tax incentives at all. And when we pass the President's tax bill my hunch is, there is going to be a plethora of new tax incentives added in that bill to encourage people to save more, invest more, and do more research and development.

I understand the administration's commitment to fiscal sanity, but the real opposition to this bill, deep down, is philosophical, not monetary, and it is not because we are using a tax credit. The very people who oppose this bill because it's a tax credit, will be here in another month advocating something else with tax credit.

Juanita Ramirez.

#### STATEMENT OF JUANITA RAMIREZ, IRVING, TEX.

Ms. RAMIREZ. Good morning.

Presently many tax credits are given by the U.S. Government, some of which are either unimportant or aimed solely at the upper income or business-oriented citizens.

I am asking you what could be better or more important than a tax credit to help average income parents provide an excellent education so that our children can become productive citizens for tomorrow.

That we choose to place our children in a school that insists on moral and religious values, a thing that society is crying about because it is not found in the public schools today, is an exercise of free choice.

The United States advocates a pluralistic approach in all facets of life, but the area of education is threatened because of the high cost of nonpublic education.

The majority of the families who send their children to a Catholic school are moderate to low-income citizens. It is these people whom I represent who have to pay a good share of the National, State and local taxes to keep the public school system going, but who at the same time are not eligible for business tax credits.

Because of our jobs, we also are not eligible to some of the free or reduced health benefits of the more economically deprived citizens.

We are striving to provide the best we can for our children and for ourselves. We are the middle class working people who are the backbone of this country.

What I am asking for today is a little consideration to help us exercise our American right to freedom of choice by receiving a tax credit on tuition.

President Reagan is devoting himself to tax cuts. Is it not fair for him to endorse tax credits to those who are carrying a double tax burden?

We who are asking for this help are not the rich of the land. We are struggling to make ends meet but we are doing it for our children's education. Our parents worked hard to give us many

opportunities and advantages which they were denied either because of lack of money or because of prejudices.

And we as parents now want to give what is best for our children, namely a good solid education in a Christian atmosphere.

We in the Southwest who represent an expanding minority group are very conscious that an unusually good education is the only answer for success for our children in an Anglo-dominated society.

Personally, I have chosen to send my children to a Catholic school because I want a disciplined education based on moral and religious values.

What beliefs we as parents are instilling in our children, we want reinforced in a school environment. An education based solely on knowledge does not make a complete person.

The traditional beliefs and teachings used in a Catholic school are what we have chosen to enrich our children's lives so that they can continue to contribute to this great country of ours.

According to the statistics that I know only about 10 to 15 percent of those parents who send their children to nonpublic schools are in the high economic bracket.

All the others are in my class, ordinary struggling families. Statistics for the diocese of Dallas show that in the 15 elementary schools in Dallas, 47 percent of the enrollment is minority and of the 4 high schools in Dallas 24 percent of the enrollment is minority.

Senator PACKWOOD. Thank you very much.

Wallace Tolman.

#### STATEMENT OF WALLACE G. TOLMAN, JR., MANASSAS, VA.

Mr. TOLMAN. I represent probably a middle-class type of individual who, through concern and through conviction, has placed his children in a private situation rather than a public situation, as far as their education is concerned. I feel it is my responsibility, and my responsibility to God, to decide where my children will be educated, who will do that educating; and I have taken great pains through the years to select the teachers and the schools.

As far as this neighborhood is concerned, I have been here about 3 years, now, and my children go to a school that is 23 miles away from home.

There are 2 others that claim to be the same type of school within 6 miles of home. My wife drives them both ways 23 miles each day because of the fact that that school offers more of what we feel our personal religious convictions are in educating our children.

Now, if the public system tried to do this, if they tried to form a system that could be equitable to everyone, it would just literally be impossible.

You would have to have as many teachers as students. And not only that, more teachers than students, because each teacher couldn't teach the same subject on the same basic guidelines, morally, religiously, and ethically.

So each of us, I feel, must make a decision as to where we are going to send our children, and based on that we have to then get into the economics of the thing.



Can we afford it? Or can we afford not to?

Well, my children have been in private school, or the oldest one, for 8 years. I have four. And I make a fairly decent wage, here in this area.

But that has only been for the last 2 years. Three years ago, when I first came down here, I filed what they call income tax averaging.

And I didn't even have to pay any tax because of the money that I made before that. My children have gone to private tuition schools, at times when they had just one baked potato to eat for supper, and that was it.

As a part-time worker and a college student, earning \$84 a week, painting, and another \$60 a week over and above working for a fast-food organization after it got too dark to paint outside, my four kids were in a private school.

And I have had them there because of conviction. And all I am saying is that now I can afford it a little bit, and I appreciate that. I praise the Lord for it. But, at the same time, if you are willing to give a little tax incentive to folks, I think it would help them out.

Not only that, but I think it would help the public system out, in the fact that they wouldn't be called upon to educate these additional children and therefore they could vary their curriculum more to the ones who did choose to send them there.

I would like to add that if my school felt that you were adding some sort of strings to the bill—in other words, if there was anything that they would have to comply with in order for me to apply for it and receive this tax tuition credit, I wouldn't apply for it.

Thank you for your time.

Senator PACKWOOD. Thank you very much.

We will conclude with Joseph Horton from Leesburg.

#### STATEMENT OF JOSEPH HORTON, LEESBURG, VA.

Mr. HORTON. Good morning. I really feel out of place here. In fact, I'm considered to an extent—

Senator PACKWOOD. Let me assure you, you are in no way out of place here. You are more in place here than many people who come.

Mr. HORTON. Well, all of my life I've been the token, and I'm beginning to feel that way again.

My youngest son is in private school, which is Leesburg Christian.

My oldest child is in public school and he is in the ninth grade. The schools that both of them attend I think are very good.

Leesburg Christian is costing me \$700 a year, and in order for him to go in first grade, which I won't be able to put him in, will be about \$1,400 next year. And after third grade it goes up \$300 and after sixth grade it goes up another \$300.

My main plea is the fact that I believe that everybody should be given some kind of a credit, regardless of race or creed, whatever.

As far as whatever school they want to put them in, the religion is their own choice, I mean, as far as I am concerned the religion is there but my main concern is the teaching of the child itself.

And to see a better education and to see less drugs. The thing I like about the private school that my child goes to is the fact that

his first day there his hand was spanked and he was stood in the corner. And his third day there he had to go stand in the corner once again. But after he toned down, which is something like what we had in school when I was in school which we don't have in school now.

I think it is something which is sometimes necessary. I can't afford like I said, to continue to send him to private school due to this fact.

But I also hate to see the private schools abuse this should it come to pass due to the fact that like hotels and everything else once the money is being administered or given to the Government employees such as per diem they start raising the tuition just because they know the people are being subsidized in this. So—

Senator PACKWOOD. In your closing statement you speak of credit as causing tuition costs to go up. That argument is made, Pat, by those who are basically opposed for philosophical reasons, and I never hear them make that argument when we talk about guaranteed student loans or basic educational opportunity grants, that it is going to be passed along and tuitions are going to be raised.

It is only when this issue of tuition tax credits comes up that that issue is raised, and I think it is no more true of tuition tax credits than it is of any of the other methods of financing that we give to education.

Would you mind just going across, I know, Mr. Tolman, you listed your occupation as a consignment manager for Brock Cash Register, but I am curious what the occupations of the panelists are.

Could we start with you, Mr. Sadlier?

Mr. SADLIER. OK, I am manager of a small, noncommercial radio station in Annapolis.

Senator PACKWOOD. Noncommercial?

Mr. SADLIER. Yes, sir.

Senator PACKWOOD. Thank you.

Ms. Hanford?

Ms. HANFORD. Yes; I'm on the board of trustees in a private school, and I'm a volunteer mother.

What I'd really like to say is there is no way that nonprofit private schools are going to pass through the tax credit.

They are working at barebones and they aren't out to make a profit. They are nonprofit institutions, and those that serve on them are volunteers.

So I would support your issue.

Senator PACKWOOD. Ms. Ramirez?

Ms. RAMIREZ. Yes; I work as administrative clerk for the Dallas Independence School District.

Senator PACKWOOD. Mr. Friedman.

Mr. FRIEDMAN. I am an attorney with a national firm.

Senator PACKWOOD. Thank you.

Mr. Tolman, you told us.

Mr. Horton?

Mr. HORTON. Once again, I am out of place.

I am a computer technician for the Government.

Senator PACKWOOD. You are not out of place.

Let me just say, again, I can't tell you what a pleasure it is to see your sense of commitment. None of you make, I am just guessing, what would be regarded as more than a middle income living. The commitment that you are willing to make and the extra time that you are willing to work to provide your children with the kind of education that you think is good for them is very, very heartening.

I don't have any questions, personally, but I thank you very much.

Chuck?

Senator GRASSLEY. I had the occasion during the week's recess to address a college graduation of 1,600 graduates, and a Christian academy graduation of 4,000.

And I had a staff member with me that made a comparison between the two graduations and suggested to me that I ought to have the people in Washington, D.C., come to visit with the people that were at the small academy dedication to learn of the sacrifice people of this country of little means are willing to make for the things they believe in.

I think there is just a great deal of truth to that. That really, it is a part of America that hasn't been recognized very much since DeToqueville went through our country in the 1820's, 1830's, or 1840's and made the statement he didn't really notice the difference of America until he went to our churches and learned about the spiritual foundations of America.

And I think that is emphasized by the different and varied backgrounds and incomes that you folk have here and the sacrifices you are willing to make.

And I think that there is something that isn't recognized in America that you people stand for, and it is the greatness of America.

Senator PACKWOOD. Pat?

Senator MOYNIHAN. Just to add to my friend and colleague, Senator Grassley's observation that what DeToqueville found in America and thought most remarkable was what he called our genius for association. Everywhere he went he found people who had come together voluntarily to do something they thought worth doing.

One of the efforts we intend to make in these hearings is to reassure persons who are working to send their children to non-government schools that far from being a new phenomenon or deviant minority, such schools were, to the contrary, the first schools in America.

Yesterday we had a photograph here about the Polonies Talmud Torah School of the congregation Shearith Israel, which was opened in 1802 in New York City, by the Spanish and Portugese Synagogue. They had a little signboard where they listed the donations.

The donations were from the State of New York and the city of New York. It was the normal thing for public officials to provide aid to all schools, whatever schools, for the legitimate purposes they fulfilled. But the one other thing beside the legitimacy of these schools that we have found rather surprising, and we are not angry at anyone, and we don't want to quarrel, but there has been an effort somehow to represent these schools as enclaves of privi-

leged persons who are escaping the masses and the ordinary folk who attend the public schools.

That is not so. Mrs. Ramirez said, I believe, that in Dallas 47 percent of the enrollment in the elementary schools is minority students, as is a quarter in the high schools. And you heard earlier, perhaps, Secretary Bell, make the rather striking statement that the median tuition at the elementary level is \$315 in church-related schools.

Now that constitutes a remarkable economy. If you can do that, that suggests you know something about teaching. It also suggests that the plain people of America are in these schools. To describe every private school in the country as an Andover or Groton is really not becoming to those who simply disagree with our purposes here.

Why don't they just disagree with our proposal? And so I thank you all for representing what is in fact the case of a very plural, varied group of parents because this is a very plural, varied country.

Senator PACKWOOD. Bill?

Senator BRADLEY. No questions.

Senator PACKWOOD. Again, thank you very much, for coming.  
[The statements of the preceding panel follow:]

TESTIMONY BEFORE THE SENATE FINANCE SUBCOMMITTEE  
ON TAXATION AND DEBT MANAGEMENT:  
HEARING ON TUITION TAX CREDITS

THURSDAY, JUNE 4, 1981

Delivered by: William (Bill) A. Sadlier  
205 Janwall Street  
Annapolis, Maryland 21403

It is the right of each and every child in this great nation to receive an education that will provide him with the basic skills to lead a fruitful and productive adult life. More importantly, it is the right and responsibility of every parent to see that his or her child receives an education that is compatible with the parent's philosophy of life.

Some philosophies encompass the whole man. For instance, I am a born again Christian. As a Christian, I have turned over my life to Jesus Christ because I have recognized that the Bible is true when it says that all men, including me, are sinners - we've broken God's law at some time or another. God gave his Son Jesus Christ to pay for my sins and the sins of all who put their faith and trust in Him. As a result of what God has done for me through Jesus Christ, I now have a real desire to obey God. I believe that the Bible is the written Word of God and that the Bible addresses itself to many of the issues of the day. I also believe that obedience to God's Word can and will provide men with true peace, happiness and fulfillment. I have a right and responsibility to teach this to my children in every aspect of their lives.

As a citizen of the United States, I recognize that not every American shares my personal religious convictions. God has permitted us to live in a country that allows us to worship Him in any way we see fit - or to not worship Him at all.

Recognizing our responsibility to educate our children, we, as a government, have passed laws making it compulsory for every child to receive a minimum education. To insure adequate educational opportunity for every child, we set up a system of public schools throughout the country. To help operate the school system, we developed a variety of taxes - some of which I pay.

Even though I pay taxes, I can't send my children to the public schools because we have two different philosophies of life. The public school across the street from my house cannot tell my children that God created the universe because the school is government run. The school across the street from my house can teach my children the do's and don'ts of our societies ever changing morals and standards, but the teachers can't tell my children about the never changing law of God. The public school can tell my children that mankind will solve all of the world's problems, but the teachers can't tell them that the Bible says man is sinful and everything we touch eventually becomes corrupt and ruined. Science is out because it is taught as the saviour of the world rather than the discovery of God's creation. In Math, my children cannot be shown the orderliness of God. History cannot be taught as His-story. The basic philosophy is different. I can't send my children to the public schools.

Next year my wife and I will pay approximately \$1900 to send our two boys to Christian school. In addition to the tuition, there is transportation which represents an extra expense. We have succeeded in paying for the first six years of our children's education because we were willing to make many sacrifices in our style of living. We have sacrificed because we believe it is important for our children to have a Christian education. With inflation eating away at every dollar. I earn plus a third child ready to enter school the following year, I am not sure I can continue to send my children to Christian school.

Two things will happen if I am not able to pay the private school tuition: 1) My right to educate my children will be taken away from me and given to the state. 2) The Anne Arundel County School System of Maryland will have the additional burden of three more students at an average cost of \$2,108.97 per student per year. That money will have to come out of an already bare bones school budget.

In conclusion, the Tuition Tax credit will provide at least some relief for parents like myself who can't in good conscience send their children through the public school system. It will also help avoid additional strain on an already overloaded public school budget.

STATEMENT OF  
JACOB I. FRIEDMAN  
BEFORE THE SENATE FINANCE  
SUBCOMMITTEE ON TAXATION AND DEBT  
MANAGEMENT GENERALLY, THURSDAY, JUNE 4, 1981

Mr. Chairman and Members of the Committee:

Thank you for giving me the opportunity to appear before this distinguished Committee. My name is Jacob I. Friedman and I reside in the Midwood section of Brooklyn, New York. As a parent of three children who attend Jewish elementary schools, known as yeshivos, I am active in various parents' groups. These parent groups are comprised of individuals drawn from a broad spectrum of income levels. I am here today to briefly describe the urgency of the Packwood-Moynihan Tuition Tax Relief Act of 1981 to us.

We feel choked and we feel neglected!

We feel choked by the powerful forces of inflation and taxation, which drown our ability to better our station in life. We would like to achieve the same level of accomplishment as our neighbors have achieved--but we can't. In addition to paying for our own children's education, we must help pay for the education of our neighbors' children. We recognize the need for the public school system and gladly support it. Yet we read in the newspapers about the high per capita cost of public school education. Aren't we saving the public school system great sums of money? Come September, in addition to paying for the education of my neighbors' children, I will pay close to \$4,000 a year of my after-tax



earnings for my three school-age children, and soon my little one will be running off with his school-bag. To pay for all this, I work late and get home when my neighbor is playing after-dinner stick ball with his nine-year old; and often too late to do anything but ask my kids--did you do your homework?

We also feel neglected. I have here a copy of the Internal Revenue Code in which one can find almost any form of tax incentive the mind can conjure up. Singularly lacking is any form of recognition dealing with children's education. Congress recognizes tax-exempt bonds, tax shelters and tax-deferred pension plans. We parents feel neglected. We are also stimulating the economy. We are giving our country new taxpayers who will be better educated and hopefully high bracket taxpayers. Don't neglect us. Please recognize our contribution to society by giving us a tax credit the way you give tax credits to movie films and alcohol mixtures.

Thank you.

DATE: June 4, 1981  
TO: Senate Finance Committee  
FROM: Mrs. Juanita Ramirez  
2122 Pebblebrook  
Irving, TX 75060  
RE: Senate Bill 550 - Packwood/Moynihan Tuition  
Tax Credit Proposal

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Presently many tax credits are given by the United States government, some of which are either unimportant or aimed solely at the upper income or business oriented citizens. I am asking you what could be better or more important than a tax credit to help average income parents provide an excellent education so that our children can become productive citizens for tomorrow.

That we choose to place our children in a school that insists on moral and religious values, a thing that society is crying about because it is not found in the public schools today, is an exercise of free choice. The United States advocates a pluralistic approach in all facets of life, but the area of education is threatened because of the high cost of nonpublic education. The majority of the families who send their children to a Catholic school are moderate to low income citizens. It is these people whom I represent who have to pay a good share of the national, state, and local taxes to keep the public school system going, but who at the same time are not eligible for business tax credits. Because of

June 4, 1981 Page 2  
S.B. 550 - Mrs. Juanita Ramirez

our jobs, we also are not eligible to some of the free or reduced health benefits of the more economically deprived citizens. We are striving to provide the best we can for our children and for ourselves. We are the middle class working people who are the backbone of this country. What I am asking for today is a little consideration to help us exercise our American right to freedom of choice by receiving a tax credit on tuition.

President Reagan is devoting himself to tax cuts. Is it not fair for him to endorse tax credits to those who are carrying a double tax burden? We who are asking for this help are not the rich of the land. We are struggling to make ends meet but we are doing it for our children's education. Our parents worked hard to give us many opportunities and advantages which they were denied either because of lack of monetary means or because of prejudices. And we as parents now want to give what is best for our children, namely a good solid education in a Christian atmosphere.

We in the Southwest who represent an expanding minority group are very conscious that an unusually good education is the only answer for success for our children in an Anglo-dominated society. Personally, I have chosen to send my children to a Catholic school because I want a disciplined education based on moral and religious values.

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S.B. 550 - Mrs. Juanita Ramirez

What beliefs we as parents are instilling in our children, we want reinforced in a school environment. An education based solely on knowledge does not make a complete person. The traditional beliefs and teachings used in a Catholic school are what we have chosen to enrich our children's lives so that they can continue to contribute to this great country of ours.

According to the statistics that I know only about 10 to 15 percent of those parents who send their children to nonpublic schools are in the high economic bracket. All the others are in my class, ordinary struggling families. Statistics for the Diocese of Dallas show that in the fifteen elementary schools in Dallas 47 percent of the enrollment is minority and of the four high schools in Dallas 24 percent of the enrollment is minority. We who are in the moderate to low income bracket have always been willing to make personal sacrifices in order to give our children the hope for the future that only a quality education can provide. But many of us now can no longer choose freely between public and nonpublic education because of the high cost of living.

Therefore, I ask you to give this your wholehearted support since as obedient taxpayers, we have never pressed you. A tax credit is not the complete answer to our financial problems, but it can help in a major way. May you help us exercise the freedoms of a government that all of you represent.

## SUMMARY

Wallace G. Tolman Jr.  
12503 Purcell Road  
Manassas, Virginia 22110

Age 36. Married.  
4 Children  
Consignment Manager, Brock Cash Register Co.  
Alexandria, Virginia

## Qualifications:

Graduate Houston Independent School District  
2 years Elementary Education Baptist Bible College  
1 semester teacher's aid 4 grade-public.  
4 children in private school.

## Convictions which mandate private school

1. Verbal inspired Bible
  - a. guide
  - b. reinforces positive attitudes
  - c. sheltering
  - d. on this one conviction alone will continue regardless
2. Education homes responsibility
  - a. responsible to God for training
  - b. elected attempt to work out equitable system to each
  - c. 100% against tuition tax credit if strings attached
3. Public education is a different religious education
  - a. Atheistic Humanistic Evolution-American Humanist Assoc.  
Humanism is the belief that man shapes his own destiny. It is a constructive philosophy, a non-theistic religion, a way of life.  
Membership brochure of Humanist Community of San Jose.  
American Humanist Association promotional brochure quotes Julian Huxley "I use the word 'humanist' to mean someone who believes that man is just as much a natural phenomenon as an animal or plant; that his body, mind and soul were not supernaturally created but are products of evolution, and that he is not under the control or guidance of any supernatural being or beings, but has to rely on himself and his own powers.
3. Taxes support opposing religious view therefore, I support tuition tax credit as way to put my money into religious educational system of my choice.
4. Controlled discipline produces academic standard.
  - a. loose control witnessed
  - b. values have swapped rolls respect for authority and disrespect.
  - c. calm settled atmosphere to nurture young minds.
  - d. above average, well above skipped 6th, 8th & 12th Stanford Achievement Tests
  - e. well disciplined education will be maintained tuition tax credit or no.

Summary continued.

5. Segregation

- a. proximity to racial minorities
- b. all three schools open to all
- c. Scott Carpenter K5 Pastors award
- d. true believer's eyes blind to color where Christian fellowship is involved.
- e. Tuition tax credit will not help Bro. Carpenter or myself to gain segregated educations.

Finance

1. God's plan Luke 6:38 give, and it shall be given unto you; good measure, pressed down, and shaken together, and running over, shall men give into your bosom.
2. Groceries provided 3 carts \$50 1/2 cart
3. Clothing provided 2 months
4. only mortgage and income short \$32.00 monthly without giving
5. richest Father around?
6. tuition, books, reg. fees, transportation \$,300.
7. 4 years ago at \$24 per wk. all in private school
8. Luke 6:38 Is Caesar some of the 'men' the Lord shall use to give back to me? If not, His promise is not void, my children will be learning of Him by His side morning, noon and night, at home, at school at church, at play.

Wallace G. Tolman Jr.  
12503 Purcell Road  
Manassas, Virginia 22110

Senate Finance Subcommittee  
Tuition tax credits

Wallace G. Tolman Jr. Age 36 Married.  
Four children. Caucasian.  
Consignment Manager-Brock Cash Register Co.  
Alexandria, Virginia

Qualifications: Having graduated from the public system known as Houston Independent School District, Houston, Texas, spent two years at study in Elementary Education at Baptist Bible College, Springfield, Missouri, worked one semester as a teacher's aide in a public elementary school, Springfield, Missouri, and kept 2 of my four children in private Christian (Independent Baptist) Schools for eight years and two for four years, I feel keenly about tuition tax credits. I therefore, offer my personal testimony as typical of most of my acquaintances in this circle over the past 8 years involvement in three states of this nation, Florida, Missouri and Virginia.

Let me now present a few of the convictions which cause myself, as a Christian, to reject tax based "public" education for tuition based "private" education. First, I hold the Holy Bible to be the Word of God Himself, verbally inspired in its entirety. Not merely an inspiring book, but the infallible revelation of the words of God as to the direction man's every decision and daily action should take. The Bible, coupled with the indwelling voice of God, the Holy Spirit, within the soul of the rejuvenated reborn sinner is a living guide for each and every situation. In following this conviction, I find my children, being exposed to the Word of God at home, at church and at school show up as a reinforcement in their positive attitudes towards absolutes, towards their peers, siblings and towards authority. Rather than the sheltering philosophy so many seem to think we weave about our children, I see this grounding in God's own Word as revealing to them the truth of God's real world, from which their public school counterparts are mostly sheltered. Training my children to have a foundation upon which to base all future decisions and action seems to me more important than the constant negative tutoring of relatively theories so constantly mixed in the texts of public systems today. Agreed there are many causes and effects to be related in life, however, if the teaching of the very Creator of that life are ignored I find an end product that has no more moral fiber about his decisions or actions than does the brut beast from which he is taught he evolved. My children, through their understanding of God's Word, as their daily guide to living, feel comfortable about themselves and about their purpose in life. I submit, therefore, I have and will continue on the grounds of conviction, to educate my children privately regardless of tuition tax credit.

Secondly, I find, in God's Word, the fact that the responsibility for my children is mine, the homes, not Caesars, our governments. Our forefathers saw this responsibility in that all schooling was done at home or by a teacher who was scrutinized very closely indeed by that responsible home. Children are a gift of the Lord and only a loan. As a husband, under God's chain of authority, I am directly accountable to God for the training of my children. This is not a responsibility I delegate lightly, as one who wishes only to be rid of the brats for the longest possible periods each day, but rather a responsibility which with much concern and scrutiny delegate to a select few in this world. I am, as many and most public school parents are, a concerned parent. I suppose I must say the difference lies in the fact that our home is not controlled by circumstance and tossed about by the winds of uncertainty, but rather is grounded in the Controller of Circumstances and steadfast in His promises. Government has in the past four decades overstepped its bounds in its exuberance to do for the governed. As a result we have at least two generations of adults today who have relegated to government their responsibility to know and be informed of their children's education. Thus, the elected officials can only attempt to work out a "public" system equitable to all religions. It is then clear to me that the responsibility I have taken for my own convictions in educating my children, has been relegated out of frustration and a sense of custom by others to our government. If children are a gift of God, as His Word proclaims, then we must render them unto Him and His heart, and not unto Caesar's compromising benevolence. In saying this, I ground this statement, if there is to be any regulation by government upon the operation, operators, texts, etc. at all, of the private Christian Schools as a result of tuition tax credit, I stand 100% against it.

Thirdly, the elected officials attempt to compromise a "public" system equitable to all religions has failed to do anything except create a new one, namely Atheistic Humanistic Evolution. As a tax payer who's monies rendered unto Caesar, are used to support this contradictory religion, to my own, Theistic Creationism and catastrophism, I am saddened at our justice. I truly believe in the right of every individual in this country to express and hold to his religious convictions. I will argue points with any and all using my own as a basis, but I will die, as my fathers before me for his right to argue his in return. Thus my heart is pricked to see a "public" system which wants to train my children away from our convictions as though their own were the only truly feasible ones. What is religion but faith, and I am convinced there is much more scientific evidence on the scale side for Creationism-Catastrophism mode of The Holy Bible than the humanistic Atheistic Evolutionism mode of Darwin and John Dewey, to warrant my faith. Then why doesn't the government, in its benevolence, at least give objective light to my faith as they should the others? Then we would have a more balanced science curriculum upon which young minds could make their own choice as free men should. And, also, we could witness I'm sure, and properly so, the establishment of private religious schools subscribing to the religion of Atheistic Humanistic Evolutionism now called public and all representative!! I still could not use a public system which would honor, the other religion so, for I am as narrow as God's Word and thankful for it, but at least it would then be a public system for those who could.



If you haven't, I suggest you secure a copy of Dr. Henry M. Morris' book Scientific Creationism, Creation Life Publishers, San Diego, Ca., for an eye opening objective look at Creationism-catastrophism mode vs. Atheistic Humanistic Evolution mode of Geology, Biology and Science in general.

To further illustrate the truth of religious bias of today's public systems I offer the following excerpt from Scientific Creationism:

"We do not wish in this section to discuss religion in a religious context, but rather in a scientific context. No Biblical quotations or religious doctrines will be discussed, nor any specific religion. However, in order to deal adequately with the subject of human origins, the whole scope of man's nature must be considered in terms of what it really is.

And the fact is that, whether it has come about by evolution or creation, man really is a moral, esthetic, idealistic, religious being, and animals are not. This is an objective fact with which science must deal. And certainly it is essential that the educational process should deal with it. Teachers hope to inculcate values of some kind in their pupils (something trainers can never hope to do with animals), and this very fact presupposes their pupils to possess moral natures. How can a teacher meaningfully convey value systems without dealing with the fact that their listeners possess natures capable of comprehending and appropriating values?

We are using the term "religion" in a very broad sense, as including any concepts of ethics, values, or ultimate meanings. Evolution is, in fact, a religious belief in this sense, and so is atheism. In fact, this is one very cogent reason why creationists object to the exclusive teaching of evolution in the schools, since in effect this amounts to indoctrinating young people in a particular religion, with its own system of ethics and values and ultimate meanings.

That evolution is fundamentally religious, is recognized officially by the American Humanist Association. 'Humanism is the belief that man shapes his own destiny. It is a constructive philosophy, a non-theistic religion, a way of life.' The American Humanist Association is a non-profit, tax-exempt organization, incorporated in the early 1940's in Illinois for educational and religious purposes' Many prominent evolutionists, such as Julian Huxley, R. J. Muller, Hudson Hoagland, and others are listed as leading members of the association. One of the founders is listed as John Dewey, the man more responsible than any other single individual for our modern philosophy of public education. The A.H.A. promotional brochure quotes Julian Huxley as follows: 'I use the word 'humanist' to mean someone who believes that man is just as much a natural phenomenon as an animal or plant; that his body, mind and soul were not supernaturally created but are products of evolution, and that he is not under the control or guidance of any supernatural being or beings, but has to rely on himself and his own powers.'

No one questions the right of Julian Huxley, John Dewey or anyone else to believe such things if he wishes, but that does not give them the right to indoctrinate students in such beliefs, especially under the name of "science".

Creationism also must be "believed", of course, but the creation model provides at least as effective a framework for the scientific data as does the evolution model.

Many teachers have the mistaken impression that the United States Supreme Court has outlawed the teaching of creation in the public schools. What it actually has done is to ban the exclusive teaching of creation, and creationists heartily support this ruling. As a matter of fact, the ruling applies equally to evolution as well as creation. In his judicial comment, Justice Abe Fortas said: 'Government in our democracy...state and federal, must be neutral in matters of religious theory....It may not aid, foster, or promote one religious theory as against another.'

Thus if evolution is to be taught, then creation should be taught and vice versa. Furthermore, they must be taught equally. One may not be promoted as against another. We suggest the the best and fairest way to do this is simply to define and present the two models, with the scientific evidence evaluated in light of both on a comparative basis. The material in this book has been prepared primarily to enable teachers to give the evidence supporting the creation model. They have already been instructed, no doubt, in the evolutionary model and all the regular textbooks in use in the public schools likewise favor the evolution model. It is this situation which the present book attempts to help balance.

Recognizing, however, that some kind of religious commitment is intrinsic in the very nature of man (and children, in particular), even if he calls it a non-supernatural religion, the question immediately before us is the meaning of this fact. How did man's religious nature originate?

Once again, we can compare the evolutionist and creationist explanations of this phenomenon. Consider first the evolution model. How does evolution explain man's moral nature? Let John Dewey himself expound this subject: 'There are no doubt sufficiently profound distinctives between the ethical process and the cosmic process as it existed prior to man and to the formation of human society. So far as I know, however, all of these differences are summed up in the fact that the process and the forces bound up with the cosmic have come to consciousness in man. That which was 'tendency to vary' in the animal is conscious foresight in man. That which was unconscious adaptation and survival in the animal, taking place by the 'cut and try' method until it worked itself out, is with man conscious deliberation and experimentation. That this transfer from unconsciousness to consciousness has immense importance, need hardly be argued. It is enough to say that it means the whole distinction of the moral from the unmoral.' One reads the above words, and is impressed with their eloquence, but somehow the conclusions do not seem to follow from the premises. The question unsolved is how does animal instinct evolve into human conscious impulse? How does the 'cut and try' method transmute unconscious adaptation into conscious deliberation?

There is a tremendous gap here, and the postulated causes seem utterly inadequate to produce the effects. Nevertheless, this seems to be the basis of John Dewey's thinking and his philosophy has had profound effect on public education for more than half a century. His entire approach seems to have been a sort of esoteric extension of Darwinian theory into the realm of human moral behavior.

"Dewey was the first philosopher of education to make systematic use of Darwin's ideas".

Another common theme among evolutionists is that since evolution has now 'come to consciousness in man', and generated moral and ethical values, as well as an intellectual capacity for understanding the evolutionary process, we are now able to plan and direct all future evolution. One of America's leading evolutionary geneticists, H. J. Muller, said: 'Through the unprecedented faculty of long-range foresight, jointly serviced and exercised by us, we can, in securing and advancing our position, increasingly avoid the missteps of blind nature, circumvent its cruelties, reform our own natures, and enhance our own values.'

Similarly Hudson Hoagland, at the time president of the American Academy of Arts and Sciences, said: 'Man's unique characteristic among animals is his ability to direct and control his own evolution, and science is his most powerful tool for doing this. We are a product of two kinds of evolution, biological and cultural. We are here as a result of the same processes of natural selection that have produced all the other plants and animals. A second kind of evolution is psychosocial or cultural evolution. This is unique to man. Its history is very recent; it started roughly a million years ago with our hominid tool-making ancestors.'

This belief that man can control future evolution is simply another evidence that evolution is itself a religion. Even assuming that geneticists and biochemists ever acquire enough understanding of genetic mechanisms to do such things, a tremendous number of value judgments will have to be made by someone when they are carried out. Every decision, as to the desirable traits of a future individual or the future course of evolution in general, will involve a vast system of ethical-values philosophy, and this is obviously religious in essence.

But again, the question is how can a random, impersonal, non-moral process like evolution produce a complex animal possessing personal consciousness and moral principles with which to make such plans and judgments? Hoagland, who is a social scientist rather than a natural scientist, simply says: 'But man himself and his behavior are an emergent product of purely fortuitous mutations and evolution by natural selection acting upon them. Non-purposive natural selection has produced purposive human behavior, which in turn has produced purposive behavior of the computers.'

One may believe this, but does saying it make it so? Is this science, where effects must have adequate causes, or is it a belief in magic? If a person wants to believe that wishes make horses, and randomly rushing particles in time will produce conscious, emotional, volitional, moral, religious behavior, then such a belief may be adopted as an article of faith. But, one has no right to call fantasies science and to indoctrinate them in the minds of young people in the name of science!

The evolution model is in trouble if it must explain man's moral and religious nature by meaningless cliches such as those of Hoagland and Dewey. Yet, these men are acknowledged leaders in the field of psychosocial evolution and a search of the literature reveals nothing any better.

But what about the creation model? The creation model postulates an omnipotent, omniscient, personal, purposive, moral Creator who created all things, including man. Unlike the evolution model, the creation model recognizes the scientific law of cause-and-effect. The Creator, the First Cause, is obviously capable of creating man as a religious being, with intelligence, purpose and ethical motivation. The creation model fits all the observed facts, directly and without embarrassment or equivocation.

It has been now shown, in fact, that the creation model, supplemented by the cataclysmic model, fits all of the real facts of every field of science and every aspect of experience with a far better degree of correlation than does the evolution model. Neither can be ultimately proved or disproved, since ancient history is non-observable and non-repeatable, but creationism fits the facts of the real world more naturally and directly than does evolutionism, as this book has attempted to prove.

However, the purpose of the book is not necessarily to convince either the teacher or the student that one should believe in creation and reject evolution, or that one should accept Christianity or any other religion. Such decisions are, of course, very important decisions, and each individual is responsible, both to himself and to his Creator (if indeed creationism is true), to face them. They have profound consequences, both throughout, and even beyond, one's life.

In any case, because of the far-reaching importance of the question, it is vital that each person have sufficient facts and logic on both sides of the question to be properly equipped for any such decisions. The purpose of this book has been to provide the needed facts to support creationism."

If my tax monies can support opposite religious educational institutions, I feel my own right to religious freedom is being infringed upon and thereby justify my support for tuition tax credit as a means to put my tax dollars to work for my choice in educational responsibility.

Fourthly, my children attend a tuition based private Christian School because of Academic standards obtained through controlled discipline. I have worked, though a short time, under the lax discipline of today's public system. I have witnessed first hand teachers losing control of even elementary grade children because of the child's knowledge of slackness in discipline. The respect for authority I knew in the public system of my early school days as the standard exceptable behavior has eroded to the outcast, and the outcast renegade behavior of my day taken its place as the norm. Why? Because of the fear instilled in those of responsible positions to exercise that responsibility by the many judiciary decisions against discipline. I choose to deliver my home's responsibility to teach authority into the hands of authoritarians not anarchists. For this privilege, and indeed it is a privilege to associate with those who are grounded in the authority of an all powerful Creator, I must search elsewhere than the "public" religious system of today. As I find the authority, so also appears a calm settled atmosphere in which to nurture the young minds in my charge.

My eldest, a son, was sent at age five to a public school kindergarten with the result of a total years learning summed up in two areas: (1) he could handle a crayola with some degree of improvement, for which I was grateful but (2) he learned to kick his sister in fits of rivalry, for which I was ungrateful. The next year he being six and his sister four we enrolled him in a private Christian school in Sarasota, Florida as well as enrolling her in the four year kindergarten classes there. At the end of the year, the two of them were reading newspapers and thoroughly enjoying one another's company. My son has now finished the eighth grade with just above average marks, my next daughter has finished the seventh with well above average marks, having skipped the sixth grade entirely, and my two twin daughters both claimed spots, as they finished second grade, on the A/C honor roll. The twins SAT test standings ranked them nationally in the top 8% and 12% of their age group. No one ticks anyone, and we pray together daily as well as have our individual quiet times with the Lord and His Word. On the other hand no experience, with even the highest achievers of the "public" system, has yielded a contact so considerate of the others about them as my children's classmates. I see our private schools of today as turning out the backbone that the educators of the thirties produced to defend the right, during WWII, for me to continue to delegate my responsibility to educate with scrutiny. If I must maintain my children in a tuition supported institute in order for them to have a well disciplined education then I shall, tuition tax credit or no.

Fifthly, just a brief word to all who might hold in their cold hearts the filthy idea that I pay to keep my children from mixing with racial minority elements. I've schooled, neighborhooded, and walked with racial minorities all my life. Every school my children have attended opens its doors to any racially different parent who can, within their heart, abide by the convictions of God's Word in their child's education. The highest honor bestowed upon a student at our present school in academics, behavior, leadership, and citizenship is the Pastor's award. This year the Pastor's award was earned not given, to a five year old kindergartener, Scott Carpenter, who along with his brothers and sisters and others of his Negro race attend his classes with mine. I'm proud of him and of God for blinding true believers eyes to color where it comes to Christian Fellowship with a brother in Christ. Tuition tax credit will not help me or Brother Carpenter to get our children into a segregated situation.

You think I can afford the tuition base schooling by examining my income record? Well, I can only say that the Lord has proven Himself real in His financial dealings with me and mine over the years. I believe the Word of God is God's Word. I am into His plan for finance, that is "give, and it shall be given unto you; good measure, pressed down, and shaken together, and running over, shall men give into your bosom." Luke 6:38. My wife can feed our family of six for one month at a time on less than \$200.00.

"How", one woman ask her while she paid her grocery bill. "Can you fill up three carts and get out of here for fifty dollars when my half cart will cost me that?" My Nancy's reply, "God controls the cash register." and so it is with our finances. I have bought one new sports coat and no suits in the sixteen years we have been married, and yet I could wear a different matched set every day for two months and never wear the same things twice!! God is not slack in His Promises. Our total monthly expenses, and we owe no bills except for our home mortgage are \$432 a month more than my monthly take home. That doesn't include the Lord's tithe or offering or the Faith Promise Missions offering because you cannot outgive the Lord if you don't give grudgingly. My Nancy works at home and earns my praise and our love and, I think, the Lord's blessing, so no income there. And this is a real good year, the best of our marriage. There have been times, in just three years past, when the Lord has chosen to give unto us our daily bread literally by the hand of man, as His church has showered us with food from its own offerings. I don't say this for sympathy, because I have no need of it, my Heavenly Father owns everything and nothing wants or increases but that He wills it. I say this to make a point. Tuition, books, registration fees, and transportation over the twenty-three miles to the proper school for my four children runs \$8,300.00 per year excluding auto maintenance and my wife's driving time. I say this to say God provides and has since the day I stopped dropping \$5.00 grudgingly in the collection plate on Sunday mornings. Even as a college student, four years ago, bring home \$84.00 per week, four of the nicest kids you ever want to meet attended a Bible teaching tuition based private school. I say this to say "give, and it shall be given unto you; good measure, pressed down, and shaken together, and running over, shall men give into your bosom." Luke 6:38. Is Caesar some of the "men" the Lord shall use to give back to me? If not His promise is not void, my children will be learning of Him by His side morning, noon and night, at home, at school, at church and at play.

Senator PACKWOOD. Our next three witnesses are not a panel, and they will appear individually but they are three well-known clerics from different faiths.

Rabbi Morris Sherer, Bishop James Lykes, and the Reverend Jerry Falwell, and of course in Washington we are forever concerned with protocol. And we wondered how to rank these witnesses in terms of order of appearance.

And when we can do nothing else in the Senate, we fall back on seniority.

So consequently we will take Rabbi Sherer first, then Bishop Lykes, and then Jerry Falwell.

Rabbi? Go right ahead.

**STATEMENT OF RABBI MORRIS SHERER, PRESIDENT,  
AGUDATH ISRAEL OF AMERICA**

Rabbi SHERER. Good morning, Mr. Chairman, and members of the committee.

My name is Rabbi Morris Sherer. I am the president of Agudath Israel of America, which is a 59-year-old national Orthodox Jewish movement, headed by the Nation's most eminent Jewish scholars.

I am accompanied here this morning by Prof. Laurence Katz, the dean of the University of Baltimore Law School, who is the chairman of the campaign to relieve independent education, which is Agudath Israel's national structure to support tuition tax credits, and by Rabbi Menachem Lubinsky, our organization's director of government and public affairs.

I have submitted a statement which I ask to be put into the record, and what I'll do now is just briefly summarize some of the points that are in my formal statement.

It is now almost 9 years since I first testified on behalf of tuition tax credits in the House Ways and Means Committee on August 15, 1972, and it is now 3 years since I testified before this distinguished Senate committee.

It is more than 20 years since I first appeared before a House congressional committee to discuss our Nation's obligations toward parents who opt to send their children to a nonpublic school.

That is, perhaps, why Chairman Packwood, you have granted me seniority this morning.

What pains me is that the same worn out arguments against nonpublic school aid that prevailed during the early years of the debate are being repeated now, in spite of the changing times and the growing public awareness of the justice and legality of our position.

Let me at the outset make one thing crystal clear. Despite strong support for tuition tax credits among masses of Jewish citizens throughout the land, many uninformed people fallaciously still perceive this as a Catholic issue.

It is not a Catholic issue, it is not a Jewish issue, and it is not a Lutheran issue.

It is an American issue of deep concern for all. In fact, perhaps the diverse elements advocating this bill appearing before this committee should help put an end to this myth.

The new mood of our country is to achieve economic stability. I submit that there cannot be economic stability without social sta-

bility and the nonpublic schools are making a major contribution to our Nation's stability.

When we talk about making America strong again it is not only to bolster our military defenses, but also to bolster our moral and spiritual defenses and here the nonpublic schools play a salutary role.

Finally, let me say a few words about Jewish education in particular. According to the latest figures of the U.S. Department of Education, there are about 100,000 Jewish students in 500 schools throughout the country.

Of the 66,000 students in 200 schools in New York, for example, about one-half come from families of poverty or near poverty background.

These same parents also have considerably higher living costs because of the large expenses incurred to meet such religious requirements as kosher food.

Tuition tax credits is a question of survival for a large number of Jewish parents, especially since Orthodox Jews traditionally have larger families.

As a battle scarred veteran of this struggle for justice for nonpublic school parents, I pray that we shall not have to go through another round of hearings again.

Let us pass S. 550 now; it is an idea whose time has come.

But after reading the New York Times this morning, I'm afraid that I will have to pray harder and work harder. Secretary Bell was really eloquent this morning. In fact, I could have dispensed with these few minutes that I took of your time and simply said amen to his testimony.

But what troubles me and a lot of us, and I say this with pain in my heart because I respect and revere this President, is that these commitments that were made to us before the election, and these beautiful words of the Secretary, who so eloquently put forth the case for tuition tax credits should not remain lip service.

Let us pass the Packwood-Moynihan bill, S. 550 now. Thank you.

Senator PACKWOOD. Rabbi, I learned years ago, when practicing law, not to ask a question to which I didn't know the answer.

But you have tickled my curiosity. What did the New York Times say today?

Rabbi SHERER. I am beginning to think that perhaps we ought to send a subscription for the New York Times to the chairman of this committee.

Senator MOYNIHAN. Chairman, the New York Times said, "Reagan Seeks Delay Action on Tuition Tax Credits."

Rabbi SHERER. Thank you, the Senator from New York has come to my rescue.

Senator PACKWOOD. Could you send me the information about the income level of these students going to the schools in New York and the one-half of them poverty and near poverty level because those are the kinds of statistics we need over and over to rebut this same myth that Pat and I have been talking about.

Rabbi SHERER. I'll be glad to.

Senator PACKWOOD. It will be very helpful to me.

[Material was subsequently provided.]



## Reagan Seeks to Delay Action on Tuition Tax Credits

By MARJORIE HUNTER

Special to The New York Times

WASHINGTON, June 3 — The Reagan Administration assured Congress today that it fully supported tuition tax credits for parents of students in private schools, but it urged that such legislation be delayed until action is completed on President Reagan's proposed budget cuts and tax reductions.

Tuition tax credits "will be at the top of our agenda at the appropriate time," John E. Chapoton, Assistant Secretary of the Treasury, told the Senate Finance Subcommittee on Taxation and Debt Management.

Later, in an interview, Mr. Chapoton expressed doubt that the President would actively push such legislation this year.

"It would be difficult to work it in this year, given the budgetary restraints," he said.

### Credits Would Rise to \$500

Beginning July 31, 1982, the bill now pending in the Senate Finance Committee would allow a parent, or an individual supporting himself, to deduct from the amount of income taxes owed up to \$250 a year for each student he supports who is enrolled in a private elementary or secondary school or in a public or private college or vocational school.

The tax credit would be increased to \$500 per pupil, effective Aug. 1, 1983. In addition, tax credits would be available for graduate students and half-time students after July 31, 1984.

The Treasury Department has esti-

imated that the bill would result in Federal revenue losses of \$2.7 billion in the fiscal year 1983; \$5.1 billion in 1984; \$6.3 billion in 1985 and \$6.8 billion in 1986.

Nearly eight months ago sponsors of the tuition tax credit were optimistic that Congress would approve the measure this year. They noted that Mr. Reagan endorsed the proposal in his Presidential campaign and that the platform of the Republican Party called for tuition tax credits.

### Moynihan's Optimism Fades

"My impression is that we now have a majority for the bill," Senator Daniel Patrick Moynihan, Democrat of New York, a co-sponsor of the bill, said in early November.

But in recent weeks Mr. Moynihan has expressed doubts about how firm Mr. Reagan's commitment to such legislation is.

"There are clouds on the tuition tax credit horizon today that were not visible in November or even January," Mr. Moynihan said early last month in a speech in Olean, N.Y.

While still firmly committed to pushing for tuition tax credits, Mr. Moynihan has said that he is concerned that the President's proposed sharp reductions in aid to elementary and secondary schools and college student loan and grant programs will erode Congressional support for aid to nonpublic schools.

"I am not confident," he said, "that in the present climate of spending reductions and tax cuts that we will be able to

muster the needed support for a new program of assistance to nonpublic education." However, Senator Bob Packwood, Republican of Oregon, a co-sponsor of the bill, is still optimistic that the measure can be passed this year or early next year.

Proposals to allow some form of tax relief for people who pay tuition have been offered in Congress as far back as 30 years ago. From 1967 to 1977, six education tax credit proposals passed the Senate but failed to win House approval.

Then, in 1978, the House voted to give tuition tax credits for students in private elementary and secondary schools and in public and private colleges, but the Senate voted to delete private schools and the entire bill failed.

The issue is still an emotionally divisive one, as today's hearing proved, with more than two dozen witnesses speaking for or against the bill and a like number scheduled to appear tomorrow.

Among those testifying in favor of the bill were Senator Alfonse M. D'Amato, Republican of New York, and spokesmen for a number of groups, including the Council for American Private Education and Citizens for Educational Freedom.

Among those speaking against the legislation were spokesmen for the American Civil Liberties Union, Americans United for Separation of Church and State, the League of Women Voters, the American Jewish Committee and the National Coalition for Education and Religious Liberty.

Senator PACKWOOD. Pat?

Senator MOYNIHAN. I think the New York Times having come up—would the rabbi mind if I repeated his story.

When you appeared here 3 years ago, you observed that it had been 20 years earlier that you had first appeared before a congressional committee on behalf of Agudath Israel and supported aid to, public assistance to religious-affiliated schools.

And this was such an event at the time that it made the front page of the New York Times. And then you said that it has now become such a commonplace thing that I fear we won't even make the last page of the New York Times today.

You are quite right. But it is important that we understand that there has been a learning process.

Just yesterday we had a panel of constitutional authorities, men of great distinction and learning, from our best law schools, saying that what was taken so uncritically 25 years ago in terms of the establishment clause of the first amendment is no longer the view of scholars.

It perhaps never was the view of scholars. But it became the view of judges. And, in particular—I wonder if you wouldn't comment on this rabbi—it was suggested to us that the true constitutionality of this legislation may lie in its implementation of the free exercise clause of the first amendment.

Rabbi SHERER. Well, that is at the heart of it. Perhaps Professor Katz, who is with me, could comment on that.

Dr. KATZ. I agree that is at the heart. One of the key features of this bill is that it benefits the parents and gives to each of the parents a choice of the school that parent wants to send the child.

It does not directly impact or cause any new relationship to be developed with any school.

Senator MOYNIHAN. But it facilitates the free exercise of religion, which at some level is effectively denied to persons who, desiring a religious education, can't afford one, and the public only provides a secular one.

Dr. KATZ. Well, I think that the testimony of the parents a few moments ago indicated that at least some felt that they could not exercise their religious choice by sending their children to a public school.

And that the only appropriate way that they could exercise their religious choice was to send their children to a particular private school. This legislation would permit a freer choice by permitting it to be financially feasible.

Senator PACKWOOD. Bill?

Senator BRADLEY. No questions.

Senator PACKWOOD. Sparky?

Senator MATSUNAGA. No questions.

Senator PACKWOOD. Gentlemen. Thank you very much.

[Statement follows:]

SUMMARY OF TESTIMONY OF RABBI MORRIS SHERER  
PRESIDENT OF AGUDATH ISRAEL OF AMERICA  
BEFORE THE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT  
OF THE SENATE FINANCE COMMITTEE  
THURSDAY, JUNE 4, 1981

Agudath Israel of America advocates passage of the Tuition Tax Relief Act of 1981 (S. 550) because:

- 1) Despite the strong support for tuition tax credits among masses of Jewish citizens throughout the land, many uninformed fallaciously still perceive this as a Catholic issue. It is not a Catholic issue or a Jewish issue or a Lutheran issue; it is an American issue of deep concern to all.
- 2) Education is a national priority; our states have compulsory education laws. We should not tolerate any governmental approach in a democratic society which advocates the exclusivity of one system, whether it is in education or in health care. Freedom of choice in education, a pillar of the cultural pluralism which is the hallmark of our nation, is the issue before us.
- 3) The national economy over the years that this debate has been conducted has increasingly taken its toll of our working poor. Our Jewish schools, as all nonpublic schools, have had to shoulder the burden of soaring energy costs and inflation in general, far beyond their capabilities. Over the years, more and more has been taken out of the paychecks of the parents for their children's schooling without any commensurate increase in earnings. Through the current tax system they continue to pay for an education which they do not use as well as for the education that they do use.
- 4) There cannot be economic stability without social stability, and the nonpublic schools are making a major contribution to our nation's stability. Not only do they lift the levels of public school education by introducing the beneficial ingredient of competition, they produce children who adjust to society in exemplary fashion, as various reports indicate. When we talk about making America strong again, it is not only to bolster our military defenses, but also to strengthen our moral and spiritual defenses, and here the nonpublic schools play a salutary role.
- 5) We believe that it is constitutionally sound.
- 6) It gives recognition to the fact that all children are entitled to a quality education.
- 7) The relationship is between the taxing agent and the taxpayer, and in no way involves the schools, clearly avoiding a church/state conflict.
- 8) It provides for a credit to children of elementary and secondary schools, as well as colleges, vocational schools and graduate schools, which means that the bill is equitably applied to anyone who has an expense for education.
- 9) Its refundability clause demonstrates that the sponsors were concerned with the poor as much as with the hard hit middle class.
- 10) The bill includes strong anti-discrimination language.
- 11) It is responsibly phased in to soften the impact of the loss of tax revenue.

STATEMENT OF RABBI MORRIS SHERER  
PRESIDENT OF AGUDATH ISRAEL OF AMERICA,  
BEFORE THE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT  
OF THE SENATE FINANCE COMMITTEE

THURSDAY, JUNE 4, 1981

Mr. Chairman and members of the committee. My name is Rabbi Morris Sherer. I am the president of Agudath Israel of America, a 59 year old national Orthodox Jewish movement headed by the nation's most eminent Jewish scholars. I am accompanied here this morning by Professor Laurence Katz, the dean of the University of Baltimore Law School, who is the chairman of the "Campaign to Relieve Independent Education," Agudath Israel's national structure to support tuition tax credits, and by Rabbi Menachem Lubinsky, our organization's director of Government and Public Affairs.

It is now almost nine years since I first testified on behalf of tuition tax credits in the House Ways and Means Committee on August 15, 1972, and three years since I testified before this distinguished Senate committee. It is also more than twenty years since I first appeared before a House congressional committee to discuss our nation's obligation towards parents who opt to send their children to a non-public school. What pains me is that the same worn out arguments against nonpublic school aid that prevailed during the early years of the debate are being repeated, in spite of the changing times and growing public awareness of the justice and legality of our position.

Also, despite the strong support for tuition tax credits among masses of Jewish citizens throughout the land, many uninformed fallaciously still perceive this as a Catholic issue. It is not a Catholic issue or a Jewish issue or a Lutheran issue; it is an American issue of deep concern to all.

Education is a national priority; our states have compulsory education laws. We should not tolerate any governmental approach in a democratic society which advocates the exclusivity of one system, whether it is in education or in health care. Freedom of choice in education, a pillar of the cultural pluralism which is the hallmark of our nation, is the issue before us.

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Testimony of Rabbi Sherer

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Our nations and states provide tax credits for items which are perceived to be of priority to our society. When we wish to conserve energy, we permit a tax credit to the one who insulates his or her home. Should it not also be considered a priority, when we wish to avail ourselves of our rights as Americans to educate our children in accordance with our tradition and beliefs, that we too should receive a tax credit? The fact that others do not make use of this option is not a valid factor regarding other types of tax credits, so why should it be an issue in education?

The national economy over the years that this debate has been conducted has increasingly taken its toll of our working poor. Our Jewish schools, as all non-public schools, have had to shoulder the burden of soaring energy costs and inflation in general, far beyond their capabilities. Over the years, more and more has been taken out of the paychecks of the parents for their children's schooling without any commensurate increase in earnings. Through the current tax system they continue to pay for an education which they do not use as well as for the education that they do use.

The new mood in the land is to achieve economic stability. Despite all the outcries over the budget cuts, the consensus of the polls is that Americans support efforts at striking at inflation and returning fiscal balance to America. I submit that there cannot be economic stability without social stability, and the non-public schools are making a major contribution to our nation's stability. Not only do they lift the levels of public school education by introducing the beneficial ingredient of competition, they produce children who adjust to society in exemplary fashion, as various reports indicate. When we talk about making America strong again, it is not only to bolster our military defenses, but also to strengthen our moral and spiritual defenses, and here the non-public schools play a salutary role.

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Testimony of Rabbi Sherer

June 4, 1981

We support S. 550 sponsored by Senators Packwood and Moynihan because:

- (1) We believe that it is constitutionally sound.
- (2) It gives recognition to the fact that all children are entitled to a quality education
- (3) The relationship is between the taxing agent and the taxpayer, and in no way involves the schools, clearly avoiding a church/state conflict.
- (4) It provides for a credit to children of elementary and secondary schools, as well as colleges, vocational schools and graduate schools, which means that the bill is equitably applied to anyone who has an expense for education.
- (5) Its refundability clause demonstrates that the sponsors were concerned with the poor as much as with the hard hit middle class.
- (6) The bill includes strong anti-discrimination language.
- (7) It is responsibly phased in to soften the impact of the loss of tax revenue.

Finally, let me say a few words about Jewish education in particular. According to the latest figures by the U.S. Department of Education, there are 101,000 Jewish students in 500 schools throughout the country. Of the 66,000 students in 200 schools in New York, for example, about half come from families of poverty or near poverty backgrounds. These same parents also have considerably higher living costs because of the large expenses incurred to meet such religious requirements as kosher food.

Tuition tax credits is a question of survival for a large number of Jewish parents, especially since Orthodox Jews traditionally have larger families.

As a "battle scarred" veteran of this struggle for justice for non-public school parents, I pray that we shall not have to go through another round of hearings again. Let us pass S. 550 now; it is an idea whose time has come.

Senator PACKWOOD. Next we will have the Most Reverend James P. Lyke, the auxiliary bishop of Cleveland, speaking on behalf of the U.S. Catholic Conference.

**STATEMENT OF MOST REVEREND JAMES P. LYKE, O.S.M., AUXILIARY BISHOP OF CLEVELAND, REPRESENTING THE UNITED STATES CATHOLIC CONFERENCE**

Bishop LYKE. Good morning, Mr. Chairman, members of the committee.

My name is Bishop James P. Lyke. I am the auxiliary bishop of the Catholic Diocese of Cleveland, Ohio.

But in my testimony today I am representing the Catholic bishops of the United States.

I am accompanied by Mr. Wilfred Caren, the general counsel for the U.S. Catholic Conference, and by Father Thomas Gallagher, secretary of education for the USCC.

This morning I wish to briefly discuss the main points contained in the lengthier written comments which I have submitted for the record.

First, Mr. Chairman, the uncertainty about the true beneficiaries of tuition tax credit legislation should now be put to rest. The recent study on private schools by James Coleman specifically analyzed what effects public policies similar to tuition tax credits would have on school-age children.

He found: First, that few students would shift from the public to the private sector,

Second, that the greatest shift would be among minorities,

Third, the groups that would shift would include more minorities and people from different ethnic backgrounds that are currently in nonpublic schools.

I might add that to my knowledge there does not exist a more comprehensive analysis of who the true beneficiaries would be under a system of tuition tax credits.

My second major point is that the history of this legislation has been muddled by misconceptions about nonpublic schools. Misconceptions which should no longer exist in the light of recent research. To be more specific, nonpublic schools have often been thought of as white, wealthy, highly selective, and educationally inferior. All of these misconceptions are unfounded in fact.

In the inner cities, Mr. Chairman, research tells us that about 72 percent of nonpublic school families earn under \$15,000 annually, while the median income for all U.S. families is over \$20,000. And further, some of these families are unemployed and receiving welfare, but manage somehow to make the sacrifice for the education of their children.

With regards to the racial and economic makeup of nonpublic schools. They can no longer be considered a priori to be racist or elitist. Although there are higher percentages of blacks in public schools across the board, research now tells us that internally, within the nonpublic schools of our Nation, there is greater integration than in the public sector.

With an increase of minorities in nonpublic schools brought about by the enactment of tuition tax credits, I think we would see

even greater interaction between races and cultures within the nonpublic schools of our Nation.

On the issue of nonpublic school selectivity, the argument is often heard that nonpublic schools can do more and achieve more because they can be selective. Nowhere, Mr. Chairman, have I seen the evidence for this. In fact, current research tells us that nonpublic schools, particularly in our inner cities, educate the same children as the public schools, while at the same time maintaining open admission policies. This doesn't mean that nonpublic schools don't ever expel students. But that such action is rare and not taken lightly.

The final misconception that I wish to address is that of quality. Simply stated, the Coleman report which has received so much attention serves to dispel the myth that nonpublic schools are inferior learning institutions, and do not offer the academic challenges necessary for today's youth. I was particularly heartened when the report specifically mentioned the Catholic schools and their resemblance to the ideal of a common school—educating students from different backgrounds and obtaining greater homogeneity of student achievement.

I do not mention these things to accentuate the differences between public and nonpublic schools. Fully two-thirds of Catholic school age children in this country attend public schools and the Catholic Church in America remains committed to and supportive of public education. But for too long the nonpublic schools in this country have been considered racist, elitist and of inferior quality. These are all misconceptions which must no longer stand in the way of the establishment of tuition tax credits as public policy.

There should be no doubt that justice and equity demand such a public policy. For to be poor without educational choices is in itself a greater poverty. The Congress is now faced with an opportunity to provide that justice and equity by providing educational choices to the minorities and the poor of this country.

Mr. Chairman, members of the committee, the time to act on this most important legislation is at hand. I urge your strong support for Senate bill No. 550, and the educational justice which it will bring to the people of this country.

Senator PACKWOOD. Bishop Lyke, as you are probably aware, Dr. Coleman is going to testify later, right after Reverend Falwell, and I think we will probably elaborate on the findings that you have mentioned.

It is indeed one of the most revealing reports about education we have seen in this decade.

Pat?

Senator MOYNIHAN. I join you in that. It is the role of the clergy to dispense charity in all matters.

I think, Bishop, you have been charitable indeed. When you speak of the misconception. There is a very great deal that is going on in recent time that verges on misrepresentation. The idea that parochial schools, for example, maintain discipline as they do, because they expel anyone they don't want.

I would like to recall for you, sir, an important fact which brings us here today, which is that the idea of Federal aid to education



was first put forward by President Kennedy. When he first came to office he was much committed to that.

It was felt that all schools should share in this aid, and yet his administration proposed that only public schools benefit. The result was that no bill could pass. And then in 1964, we came together and there was a certain amount of dialog.

And it was agreed—Commissioner of Education Keppel was there, as was I, as Bishop Hurley—that if the Democratic Party platform that year were to contain a simple statement that all schools would share, and all students would benefit, then far from opposing the matter the nonpublic schools would be for it. The platform included this commitment.

Congress convened in January and the bill was on the President's desk in March. That is what can happen when the people who care about education work together and don't look at each other suspiciously thinking that somehow there is a zerosum game here—that what I win, you lose, and vice versa. And I hope we could reach out to the persons who are so concerned right now and reassure them. All you are trying to do in Cleveland—how old is the school system in Cleveland?

Bishop LYKE. Our diocese is well over a century old.

Senator MOYNIHAN. And your school's are a century old?

Bishop LYKE. Oh, yes.

Senator MOYNIHAN. You didn't start them up last week. You are trying to keep century-old institutions going and it is a struggle for you.

Bishop LYKE. Oh very definitely. And if I may add from a personal point of view, Senator, I am one whose family was newly professed at the time that I was a child in the Catholic Church.

My own mother washed the church laundry, and I stayed after school to clean the classrooms in order that I could go to a Catholic school. And at that time the tuition was perhaps about \$5 a month. And so personally I am deeply sensitive to the many poor people, let us say, in the city of Cleveland, most of whom are not Catholic who take the advantage of the moral context, the disciplinary context and so forth, of Catholic schools.

So we are doubly sensitive to both the aspect of poverty in this regard as well as to the aspects of the rights of the poor.

Senator MOYNIHAN. Clearly you are. Thank you.

Senator PACKWOOD. Senator Bradley?

Senator BRADLEY. No questions.

Senator PACKWOOD. Senator Matsunaga.

Senator MATSUNAGA. Bishop Lyke, I too, wish to join the others in commending you for the most enlightening testimony.

Perhaps if your testimony could be publicized a bit more the opposition might be less.

Senator PACKWOOD. Sparky, I can assure you that Pat and I will do everything we can to publicize that testimony.

Bishop, gentlemen, thank you very much.

Bishop LYKE. Thank you very much, Mr. Chairman.

[Statement follows.]

TESTIMONY OF

MOST REV. JAMES P. LYKE

AUXILIARY BISHOP  
OF  
CLEVELAND

ON BEHALF OF THE  
UNITED STATES CATHOLIC CONFERENCE

BEFORE THE  
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT  
OF THE  
SENATE COMMITTEE ON FINANCE  
UNITED STATES SENATE

ON  
TUITION TAX CREDITS

WASHINGTON, D.C.

JUNE 4, 1981

Mr. Chairman, Members of the Committee, my name is Bishop James P. Lyke. I am the Auxiliary Bishop of the Catholic Diocese of Cleveland, Ohio, but in my testimony today I am representing the Catholic Bishops of the United States.

My purpose this morning is not to espouse the high quality of Catholic education throughout the country, for the evidence of that quality is abundant in the lives of so many who have studied in Catholic education institutions over the years. Nor is my purpose to discuss the many problems, financial and otherwise, facing nonpublic education today, for these problems have received much attention and are well documented.

What I do wish to discuss is the lives of people, young men and women and their parents who are looking to Congress for leadership in the establishment of national education policy; policy that will truly enhance their lives and their futures. In particular, I wish to concentrate my remarks on the people who will benefit most from tuition tax credits -- the minorities and the poor.

There can be no mistaking the fact that it is truly the poor who will gain from this legislation. To assume that a moderate amount of tuition tax credits will benefit only the wealthy is unfounded, based on little fact and much speculation. The people for whom a tax credit will really mean something are the people for whom the limited dollars will enable them to make choices about the education of their children. This, of course, is the basic economic principle of marginal utility. Therefore, to measure the true value of a tuition tax

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credit, Congress must not only consider the dollar amount, but the value of those dollars in terms of what they can accomplish and for which people.

The assessment of who will benefit in the case of tuition tax credits is clear and substantiated by hard evidence. The recent report Public and Private Schools, by James Coleman and others, specifically addresses the issue of the impact of federal policy changes to facilitate enrollment in nonpublic schools. The researchers develop the hypothetical situation of increasing family income, (which is the result of a tax credit), and analyze the effects of such an increase. The report clearly indicates that few students would shift from the public to the private sector, but of those that would, the beneficiaries of such policy would be the minorities. To be more specific, such a policy change would mean the following:

1. Only a small proportion of public school students would shift to nonpublic schools;
2. The greatest shift would be among minorities, particularly Hispanics; and,
3. The racial and ethnic composition of the groups that would shift to private schools includes more minorities than are currently in these schools.<sup>1</sup>

To quote the Coleman study itself, "Because a tuition tax credit or a school voucher would even more greatly facilitate private school enrollment for students from lower income families relative to students from higher income families, we can expect that either of those policies would even more greatly increase the proportion of blacks or students from low-income backgrounds in the private sector ...."<sup>2</sup>

Nowhere has such a detailed and comprehensive analysis been done to see who would really benefit from public policies such as tuition tax credits.

Although exact outcomes are impossible to predict, the analysis contained in the Coleman study should allay the fears that such policies would destroy the public schools by encouraging the best students to move to the private sector. In effect, both the private and public sector should benefit through the equalization of minorities in both sectors.

But what about these people who would benefit from tuition tax credits? Will tax credits really benefit students educationally? There are several misconceptions about the parents who choose to send their children to nonpublic schools, and about the nature and quality of nonpublic education. I would like to address each of these misconceptions and respond to them.

First, the picture which some people have of the majority of nonpublic schools as being white, wealthy, and highly selective is inaccurate. A recent study of inner city private schools conducted by the Catholic League for Civil Rights indicates that these schools are not predominately attended by the wealthy, but, in fact, just the opposite. In effect, Mr. Chairman, these schools draw from the same population as the local public schools. Fifteen percent of inner city private school families earn under \$5,000 annually; 35 percent report incomes of between \$5,000 and \$10,000; and 22 percent report incomes of from \$10,000 to \$15,000. Therefore, approximately 72 percent report incomes of under \$15,000 per year. By way of reference, in 1978 the median income of all U.S. families was \$20,000, which serves to exemplify the tremendous sacrifices being made by the vast majority of inner city private school families.

But this isn't all, Mr. Chairman. Of the 15 percent of all inner city private school parents earning under \$5,000, 35 percent are unemployed and receiving welfare payments. Of the 35 percent reporting incomes between \$5,000 and \$10,000, about 4 percent are unemployed and on welfare.<sup>3</sup> These are, to me, telling statistics. They indicate that there are many parents in our cities and urban areas who are in desperate need of a public policy which says to them "You may educate your children in the schools of your choice as guaranteed by the Constitution. And, furthermore, you will be able to do so even though you may be poor, or disadvantaged, or on welfare, -- whether or not you live in the cities or the suburbs, or the rural areas of this country."

To further dispel the misconception that nonpublic schools are wealthy and elite I would again refer you to the findings of the Coleman report. To summarize, the Report resulted in several interesting conclusions.

1. With regards to Catholic schools, the study found that blacks are enrolled in higher proportions than whites, after controlling for the effects of income and religious background.<sup>4</sup>
2. The difference in the enrollment of blacks (between the public and Catholic schools) would be reduced to less than half its current size if blacks had the same income as whites.<sup>5</sup>
3. Although there are indeed larger percentages of blacks in public schools than there are in nonpublic schools, the Coleman data informs us that "information on the internal segregation between blacks and whites tells a different story: the public sector has a substantially higher degree of segregation than the private sector .... Thus, the integrating impact of the lesser degree of segregation within

the private sector counteracts the segregating impact of the lower proportion of blacks in that sector."<sup>6</sup>

4. As in the case with race and ethnicity, the degree of economic segregation is lower in the private sector than in the public sector. Although there is a greater representation of higher economic backgrounds in private schools, internally there is a greater integration of students from different backgrounds than there is in the public schools.<sup>7</sup>
5. Despite the apparent belief which some have that nonpublic schools do not have to serve the handicapped or those students needing special help, the Coleman report indicates that they are doing just that. There are, as the report indicates, only small differences between public and private schools in the attendance of handicapped students.<sup>8</sup>

All of this raises one simple point. Any public policy precluding or denying freedom of choice in education on the assumption that nonpublic schools are racist or elitist is public policy based on misconception. If anything, the facts indicate that a statement of public policy in the form of tuition tax credits would serve to further improve the racial and economic mix in nonpublic and public schools.

The second general misconception which I would like to address concerns the quality of nonpublic schools, and, in particular, as it relates to selectivity. I have often heard the arguments that nonpublic schools do a better job of educating children because they can be more selective in whom they accept, and are free to expel the children they don't want. Once again, Mr. Chairman, this viewpoint is not based on the facts.

The inner city school study to which I referred earlier was based on an analysis of randomly selected schools in eight major cities around the country. The study examined the attitudes of many parents, teachers, and principals. The data from this study indicates that, after giving preference for admission to parishioners, approximately 90 percent of these schools exercise open admission policies and rarely expel students. This data is further supported by recent research on inner city Catholic schools done by Dr. Vitullo-Martin. He states, "No researcher has found any extensive use of expulsion sufficient to explain the statistical differences in achievement rates between the two sets of schools."<sup>9</sup> This is not to say that nonpublic schools never expel or dismiss students for various reasons, but does indicate that such action is not taken lightly, nor is it done very often, as some opponents of nonpublic education would have us believe.

The misconceptions about the selectivity of nonpublic schools should not prevent the provision of educational choice to parents, and neither should the misconceptions about the quality of nonpublic schools. The quality of nonpublic schools is at least as good as that found in the public sector, and in some instances better. Once again, the Coleman data appears to be conclusive as evidenced by the following summary:

1. Given the same kinds of students, nonpublic schools create more contact for students with academic activities. For example, attendance is higher, students do more homework, and they take more vigorous subjects.<sup>10</sup>



2. There is greater scholastic achievement in private schools than in public schools, brought about by more ordered environment.<sup>11</sup>
3. The growth rates in achievement between the public and nonpublic schools differ, with strong evidence that average achievement among nonpublic school students is "considerably" greater than in the public sector.<sup>12</sup>
4. In discussing Catholic schools in particular, the Coleman report concludes that Catholic schools most closely resemble the ideal of the "common school". That is, they educate children from different backgrounds, and obtain greater homogeneity of student achievement.<sup>13</sup>

Mr. Chairman, I do not point these things out to accentuate the differences between public and nonpublic education. Fully two thirds of Catholic school age children in this country attend public schools, and the Catholic Church in America remains committed to and supportive of the public schools of this nation. But for too long the nonpublic schools in this country have been considered racist, elitist, and of inferior quality. Past attempts to establish a public policy which would truly give parents educational freedom of choice have been defeated using these misconceptions as reasons against granting equity to parents, especially the poor parents of our nation. Hard evidence is now available, and it reveals these misconceptions for what they are. Poor parents will benefit most, the evidence tells us that. The schools to which they would send their children can no longer be considered a priori to be racist or elitist, for the evidence tells us that. And, the quality of education is certainly not inferior, for the evidence tells us that also. None

of the misconceptions which have been attributed to nonpublic schools in the past should stand in the way of the establishment of tuition tax credits as a matter of public policy for this nation. There should be no doubt that justice and equity demand such a public policy, for to be poor without educational choices is in itself a greater poverty. The Congress is now faced with an opportunity to provide that justice and equity, by providing educational choices to the minorities and poor of this country. Mr. Chairman, members of the Committee, the time to act on this most important legislation is certainly at hand. I urge your strong support for Senate Bill 550 and the educational justice which it will bring to the people of this country.

Thank you.

## NOTES

1. James Coleman, Thomas Hoffer, and Sally Kilgore, Public and Private Schools, a Report to the National Center for Education Statistics by the National Opinion Research Center, March, 1981, p. 71.
2. *Ibid.*, p. 230.
3. Virgil C. Blum, S.J., A Partial and Preliminary Report on Inner City City Private Schools, Catholic League for Religious and Civil Rights. Milwaukee, WI, April, 1980, pp. 2-3.
4. Coleman, p. 42.
5. *Ibid.*, p. 36.
6. *Ibid.*, p. 50.
7. *Ibid.*, p. 57.
8. *Ibid.*, p. 64.
9. Thomas Vitullo-Martin, Catholic Inner City Schools: The Future, (Washington, D.C.: United States Catholic Conference, 1979), p. 66.
10. Coleman, p. 223.
11. *Ibid.*, p. 232.
12. *Ibid.*, p. 185.
13. *Ibid.*, p. 221.

Senator PACKWOOD. In case the audience is wondering where the Republican members are, the President has called a meeting of the Republican members of the Finance Committee to talk about the tax bill.

They are all, save me, at the White House this morning.  
Dr. Falwell, welcome.

**STATEMENT OF DR. JERRY FALWELL, PRESIDENT, MORAL  
MAJORITY, INC.**

Dr. FALWELL. Mr. Chairman and members of the committee, I am here hopefully, though not by appointment speaking for all of nonpublic education in the country. But particularly for conservative, Christian, evangelical education. Even more specifically for our own school system in Lynchburg, Va. that this fall will have about 5,000 enrollment, kindergarten—age 4—right through a masters degree program, a liberal arts college, et cetera.

We, I think I would just ad lib a bit in support of what you said earlier, Senator Packwood, and what the bishop so ably said that the vast majority of students attending our school and the thousands of conservative Christians in the country that I am personally aware of, are rank and file Americans, middle income and down.

In our own situation in Lynchburg, tuition ranges between \$300 and \$500 in the first eight grades, including kindergarten. The high school between \$500 and \$900, depending upon the particular situations. And the parents sacrifice to do that.

If they happen to have more than two children enrolled, we only charge a maximum of two and one-half children. And if they have five children, the last two and one-half are free.

That is pretty well typical across our constituency. And there are between 15,000 and 18,000 such schools in the country today that we have been able to identify. Usually the polls don't show that. Because many of them are new schools with 50 students, 25 students and many very large like ours. Three to four new ones are starting every day. Every 24-hour period we are starting—well, every 7 hours we are starting a new one.

And these are conservative, Christian schools and it is, I think, the phenomena of the 1980's, and because of the pluralism of our society I think the entire nonpublic school system stands or falls together. So I say not by appointment, but certainly I hope we are speaking for all of these schools.

The choice between public and private education is a very basic personal right for parents, and that is why I am very much in support of the Packwood-Moynihan bill.

I feel that it is primarily the responsibility of parents to see that their children's education reflects their own moral and ethical values. And I believe that education should not be in the process of liberating the youth from their parents' values, but rather reinforcing them.

Because of this, freedom of choice and diversity in education to me is a very basic right and should be supported.

And I think that this bill will probably do more for that than anything that has ever been done in our Nation's history. I think it is very important that we get across to the American people that we are not talking about elitist education. We are not talking about supporting an established church. I rather think the way it is now done, we have made public schools in America much like an established state church.

We are demanding that everyone support it, whether we use its facilities or not. And we, while very much in support of public education believe that parents ought to have the right to opt otherwise if they so wish.

Critics often suggest that tuition tax credits will destroy the public school system. If that in fact is true, and one of the leaders in the movement has said that—Albert Shanker, president of the American Federation of Teachers, said that they, speaking of your bill, I suppose, would lead to the destruction of public education by giving parents a financial incentive to remove their children from public schools and place them in private and parochial schools.

That objection is very revealing. If the present system serves our Nation as well as we think it does, I can't imagine that a small tax credit of \$250, and ultimately \$500 could leave the public school system in shambles.

As a matter of fact, I personally feel that public schools would be strengthened. It has been my experience that competition is a good thing. We had an easier time in Lynchburg for the first 10 years of our church's history. We are 25 years old this month. We started with 35 members. We have 18,000 now. About one-fourth of our town.

And our schools started 10 years ago. We had an easier time with them for the first 5 years. There are now seven Christian schools in our area. We have to do a better job of it, and we are competing for the student.

So, I would simply close by saying that if this bill were rejected as so many efforts in the past have been, the poor and the underprivileged are going to be the losers. There are many, many poor and underprivileged families in our area and in our Nation that tuition tax credits will give to their parents the opportunity of what many, many other parents are enjoying right now. And I personally feel that passage of Senate bill 550 would be one of the best family freedom acts that our country has known.

Senator PACKWOOD. Doctor, I hope we yesterday have put to rest with the testimony of some constitutional experts the argument that tuition tax credits is an establishment of church. It isn't, and it does not violate the first amendment. I am convinced the courts will find that. And if the courts don't find that, they are wrong.

Two, I hope we put to rest the argument about elitism, and that people are going to flee the public schools. One, if they are going to leave the public schools with a 50 percent credit, they are going to have to pay more money than they are now paying to support the public schools.

They are going to have to pay half of this cost out of their pocket, and, if the tuition is more than \$1,000, more than half of it—out of their pocket. So it is hardly an inducement to leave.

Second, if people do leave, the argument is raised it's going to be the best and the brightest that leave. Yet, what I think is more likely is that it will be a cross section of the children of the parents we saw here earlier today. Some middle income, some rich, many poor, a cross section of religions, who are leaving for a whole variety of reasons.

And the public schools are going to be left with a very excellent student body of 70 percent or 80 percent of the people and students in this country, and a very high cross section of elite students.

And if with that kind of attendance, and that kind of leadership, and that kind of quality public schools cannot make it, cannot garner the support of the public in this country, then there is something wrong that would not be cured if they had 100 percent of the students.

The problem will not be if 20 percent, 15 percent, 10 percent, or 25 percent of the students go to private schools, sectarian schools in most cases. The problem will be something else that we have apparently not yet addressed.

Pat?

Senator MOYNIHAN. Yes, Mr. Chairman. Dr. Falwell, I would like to express my appreciation for your raising the question of what the impact will be on the public schools. I, rather like Rabbi Sherer, have grown old and gray in this particular enterprise. I can report, and it might seem surprising, that 20 years ago in Washington when this subject was raised, the established school men, you might say, spoke to you in quiet and sad tones of regret and sympathy. They would say, well, I know you want to see these schools kept open but don't you see they are such bad schools. And it would be such a terrible thing, such a shame to send a child to

them. You are depriving that child. You are not giving him a quality education. And, really, the sooner those schools go away the better education will be.

Then 20 years passed, and now we look up and those same schools turn out to be so good that if any incentive whatever is given to their continued existence, the whole of the public school system will empty out. Can these be the same schools? Obviously they are.

And the one constant in the argument is not to provide them with any assistance.

In the interests of full disclosure, Mr. Chairman, I have to tell you I have been targeted by the Moral Majority for political extinction. [Laughter.] In New York, and so my next question is only meant to clarify the record—

Dr. FALWELL. It must be another Moral Majority. It's not the one I head.

Senator MOYNIHAN. Just in the interest of clarity, because these things are sensitive. When you spoke of conservative, Christian schools, I assume that you were using the term "conservative" in a theological sense, such as—

Dr. FALWELL. Of course.

Senator MOYNIHAN [continuing]. Liberal, Protestantism, Reformed Judaism, and Orthodox Judaism.

Dr. FALWELL. The main part, the affirmative part of evangelical schools are not affiliated with major denominations. Generally associated with three school movements, the association, the American Association of Christian Schools, the Association Christian Schools International, and the Accelerated Christian Education Movement. Primarily nonaffiliated schools that believe in the inherency of Scripture.

Senator MOYNIHAN. You are stubbornly Protestant and almost unorganizable. Is that right?

Dr. FALWELL. Pretty well incorrigible.

Senator MOYNIHAN. Your reference was simply to a legitimate, theological distinction which is made among various religions.

Dr. FALWELL. We are very supportive of the pluralistic concept. We are very supportive of Senator Moynihan. [Laughter.]

Senator MOYNIHAN. Thank you. I will write that down.

Senator PACKWOOD. I might add, Pat, not the last time I saw Dr. Falwell, but the last time our paths crossed, he was in the Portland Memorial Coliseum about a year ago, supporting my opponent in the primary. [Laughter.]

However, I am happy to say the coliseum holds 20,000 people and the attendance was 800 of whom 200 were mine. And that's a fact. Bill?

Senator BRADLEY. No questions, Mr. Chairman.

Senator PACKWOOD. Sparky?

Senator MATSUNAGA. Thank you, Mr. Chairman. Dr. Falwell, I see by press reports that you have just returned from a trip to heaven, that is, Hawaii.

Dr. FALWELL. Paradise.

Senator MATSUNAGA. Did you find any sentiments about S. 550 among the people that you contacted there?

Dr. FALWELL. Yes, a number of pastors there. We met with about 160 pastors at a luncheon there, and I would say in totality supportive of Senate bill 550, the ones I met with.

Of course, there are those there who would not be, but they usually don't attend our meetings, and we very much found an interest in. Because they are Christian schools, just like ours. And there are many parochial and nonpublic schools that are not religious in Hawaii, like every State. And all of them believe that as long as, and I think this bill meets that criterion, there is no subsidy for the school. But rather, a benefit to the taxpayer and the parent, that there is no problem.

And we very much found that kind of support.

Senator MATSUNAGA. Do you maintain any schools out there?

Dr. FALWELL. Pardon?

Senator MATSUNAGA. Do you or your church maintain any schools out there?

Dr. FALWELL. No; we do not. In the independent, unaffiliated movement no organization has any control—all other schools are indigenous. The only ones we control are those in Lynchburg, Va.

We are associated with, in fellowship, with a number of schools there.

Senator MATSUNAGA. From press reports you did create quite a stir out there, and I don't know whether—I appreciate the fact that you didn't come out openly against me.

Dr. FALWELL. I didn't mention your name. [Laughter.]

Senator MATSUNAGA. And I was wondering it was because you couldn't pronounce my name or—

Dr. FALWELL. No. I learned how to pronounce it, but we went there conducting an old time gospel hour evangelistic rally and we never mix the two.

Senator MATSUNAGA. Good. I appreciate that. [Laughter.]

Well, perhaps my prayers were answered. Thank you. [Laughter.]

Dr. FALWELL. Senator Bradley, I haven't been to your State. [Laughter.]

Senator PACKWOOD. Doctor, thank you very much. We appreciate it.

Dr. FALWELL. Thank you.

[Statement follows:]

T E S T I M O N Y

of

Dr. Jerry Falwell

President

Moral Majority, Incorporated

before

Senate Committee on Finance

on

Tuition Tax Credits

June 4, 1981



## OUTLINE OF TESTIMONY

- I. Education of children is a parental responsibility.
  - A. Parents should have freedom of choice between public and private schools.
  - B. Tuition tax credits provide freedom of choice.
  
- II. Arguments against tuition tax credits are fallacious.
  - A. Tuition tax credits would strengthen, not destroy, public schools.
  - B. Tuition tax credits would help poor and underprivileged students.
  
- III. Anti-discriminatory provision is important.
  - A. Enforcement powers need to be included.
  - B. Non-discriminatory schools need protection from government harrassment.
  
- IV. Summary

The choice between public and private education is a basic parental right, and it is primarily the responsibility of parents to see that their children's education reflects those values that they themselves believe in. Education should not be a process of liberating the young from the values which are held in the home, but rather should reinforce parental values and beliefs.

Because of this, freedom of choice and diversity in education should be encouraged. While public schools are a necessary ingredient in our pluralistic society, private schools also hold an important place. Private schools are free to reflect parental values while public schools, to a large extent, are unable to promote moral and religious principles. To many parents, private schools provide vital ingredients in their children's education. However, public schools in America have been treated with the status of an established church. Everyone, no matter what they believe, is required to support them. Those who disagree or want something else for their children are only allowed to have access to it after they have paid their dues to the establishment.

True freedom would allow parents to spend their educational dollars where they see fit, and tuition tax credits bring us closer to that situation. They partially relieve parents of the burden of paying twice when they decide that a private school is the best choice for their child.

## 2.

Critics often suggest that tuition tax credits will destroy the public school system. In the words of Albert Shanker, president of the American Federation of Teachers, "They (tuition tax credits) would lead to the destruction of public education by giving parents a financial incentive to remove their children from public schools and place them in private and parochial schools." This objection is revealing. If the present system serves our nation so well, why would a small tax credit, limited to a maximum of \$500, cause students to flee the public schools in such numbers that the public schools would be destroyed? Either the statement that the public schools would be destroyed is untrue, or there is such widespread dissatisfaction with the public schools that the only thing holding them together is the financial burden of private education. The proponents of this view must hold the public school system in awfully low esteem if they truly believe that passage of this bill would lead to the demise of public education.

I do not believe this argument. Public schools would be strengthened, not ruined, by passage of this bill. Because of the new options, parents would look more at the education that their children are receiving and would become more involved in the educational process. Competition for academic excellence would be encouraged, and the public schools would be forced to strive for higher standards. The old axiom that monopolies lead to higher costs and poorer quality is true in education today, and the saddest part of this is that the poor and underprivileged are the ones who are hurt the most. These are the people who need

3.

education, and who are depending on it to help them break the cycle of poverty that they live in. They lack the ability to pay any great amount in tuition at a private school, and thus are locked into the public school system with no alternative but to attend their assigned school. Tuition tax credits would give these people the opportunity to attend a private school, or, should they choose to stay in the public system, give them a higher quality education due to the increased accountability which would be present in the public schools. For those who can already afford the expensive private schools, the credits would not mean that much, but for the bulk of private school parents, who are paying \$500 to \$1,000 per year in tuition, the credits would mean relief from the double taxation burden and a chance to choose what kind of education that they want for their children.

Another common argument against tuition tax credits is that they would aid schools which are discriminatory and which were started for racist reasons. This bill would not allow for parents of children in such schools to receive the credits, a provision of this bill that I strongly support. In fact, the bill needs to include some type of antidiscriminatory enforcement powers which will help prevent abuse, but at the same time it must be made certain that there is some type of provision which will prevent harrassment of schools by the IRS or any other governmental agency when they are in fact not guilty of being discriminatory.

4.

It is often said by critics that tuition tax credits will make public schools the dumping ground for children who are unwanted by the private schools. This argument would only be true if the public schools were in fact so poor in quality that no good students would attend them. Given the choice between public and private education, I believe most parents would opt for the public school system. Some would choose the private schools, and that is a choice which should not be discouraged by making the parents support the public school system when they are at the same time paying tuition in a private school.

I believe passage of S. 550 would help solve some of the problems that I have pointed out and would encourage our public schools to regain the excellence which they once had.

Senator PACKWOOD. Next we will have a panel of Dr. Thomas Vitullo-Martin and Prof. James S. Coleman.  
Gentlemen.

**STATEMENT OF DR. THOMAS VITULLO-MARTIN, DIRECTOR OF RESEARCH, METROCONOMY, INC., NEW YORK, N.Y.**

Senator PACKWOOD. The committee will stand in recess for 60 seconds while we let the room clear out just a moment and close the door back there, and then we will start.

Good morning. We will take whichever order you gentlemen prefer. We have Dr. Vitullo-Martin listed first. Which way do you want to go?

Dr. VITULLO-MARTIN. Senator, I am Dr. Thomas Vitullo-Martin. I am research director for Metroconomy, Inc. which is a not-for-profit management consulting firm in New York City.

I have spent a good deal of time in the last several years examining private schools, looking at their—the way in which they are financed and governed. Looking at Federal policies in particular, ESEA title I, the impact on them, and looking at the impact of private schools on a number of public, goals of public policy—including the integration of urban centers.

I am going to confine my comments as best I can to three points, I am going to give. I have prepared a written statement and I will simply try to summarize it here.

The three points are, at the risk of displaying some arrogance: A discussion of constitutionality of the approach and I wish to touch on that topic because I would like very strongly to endorse the political aspects of the tax credit approach. I think that they give great value.

The second is that, I would like to address the question of why private schools should be supported. What is the public service that they do perform?

And the third is, I would like to discuss what I think is a novel view of looking at the tax issue in its entirety, and suggest some major tax reforms that this tuition tax credit approach begins to touch upon.

The first, on the question of constitutionality. I think I differ from people in not seeing much of the constitutional problem with tuition tax credits.

I see tax credits as a form of tax deduction. A sort of equalizing tax deduction in which you establish everybody at the 50 percent tax bracket. And once you have done that, leaving aside the refundability provision, once you have done that, I think you are simply in the realm of what is our policy with tax deductions. And we clearly permit, and have always permitted the deduction of expenses that are for explicitly religious purposes.

We permit the deductions of contributions to church for the proselitizing effort.

The issue with tax credits was simply an issue of whether the IRS or the Federal rule would permit people to deduct education expenses that were not business related, that were not for profit.

If these education expenses were for profit, they would fall under the rules that handle business deductions. Because they are not for profit, they cannot be deducted.

I think that it is a bizarre form of taxation policy to tax education expenditures and thereby reduce the pool of money available for education. I don't see any serious constitutional questions that haven't already been settled by our established practice.

Now the reason I go into that is because I have studied title I for a good period of time. And I have looked at it in public schools as well as in private schools.

Title I is a very powerful device for the Federal Government because it can shape around what local systems do—public systems do—by simply withholding funding. By audit exceptions, after the fact, after money has been spent by which districts have to give back funds.

It makes districts very conservative in what they do. I think—at first I was very unhappy that the private schools didn't directly receive title I funds.

In retrospect I think it was a gift from God, if you will, that they did not receive title I funds because they would have been shaped in much the same way that public schools were. They would have been helpless to resist those pressures.

The taxation route in which you are giving a tax credit to parents gives great support to the independence of the private sector because in essence any regulations to this tax credit proposal will be enforced by withholding payments from parents.

And in fact, it won't be withholding payments. It will be billing parents for extra money. And so there are 5 million students in private schools, maybe 3 million sets of parents, maybe more. That would be a great number of people to bill, all of a sudden, and I think it would make the regulations that would come through tax credits very conservative at best, if any occurred whatsoever.

The second point I wanted to make is on the service role of the private schools. It is clearly a central issue of aid. I will end my comments as quickly as I can. It is a central issue of whether the private schools perform any kind of public services whatsoever.

To summarize, a number of statistics that are in my written report. The central cities—there are a number of different sources for information about this. But within the Catholic system itself, the central cities are increasingly and exceedingly minority dominated in the private system.

Manhattan is a small group, is 79 percent minority in its private schools. Oakland is 67 percent. A majority of San Francisco, in the city of San Francisco, are minorities.

So that there is a strong minority presence. Now, there is an important aspect of this. The minorities and private schools have been increasing their presence, in the private schools.

That is, over the last decade, private schools have become integrated—doubled in the Catholics, doubled in the NAIS schools. Public schools, in these same central areas, have become segregated.

The movement toward integration is in the private sector and not in the public sector.

I am afraid—may I take another minute to—

Senator PACKWOOD. What I am going to do with both you and the next panel—is let you take a little more time than normal. The next panel is mainly going to be opposition.

But I will have to ask you to take just another minute or two, because we have a long schedule. I will tell you what my plans are. I am willing to go to 1 or so, if necessary, this morning. And we will come back again at 2, and if necessary go to 6.

But in fairness, I cannot let the proponents go extraordinarily longer than the opponent.

Dr. VITULLO-MARTIN. I appreciate that.

Thank you.

The last point is with the taxation question itself. In 1965, 1964, 1963, in the early 1960's, most private schools charged nominal tuitions.

I calculate that approximately 4 million of the elementary school children were paying tuitions of under \$50 in 1963 or 1964.

It was a policy of these schools, and a lot of accidental reasons, to move toward tuition. What this means is, that prior to 1963 or 1964 the Federal Government permitted the deduction of the expenditures that supported private education in large part—at that time.

We have had a change since then. When these schools moved towards tuition, the parents began having—losing that deduction, and having to pay taxes on the money they earned to support those schools.

I see the tax credit as a redressing of a balance. And redressing is needed because since 1965 the private sector has declined largely. The Catholic schools have lost 43 percent of their population—almost 2 million of their students.

Catholic schools fed the public schools for a large period of this time. And prevented in them a decline that they would normally have suffered.

Thank you.

Senator PACKWOOD. Thank you.  
Dr. Coleman.

**STATEMENT OF JAMES S. COLEMAN, PROF., UNIVERSITY OF CHICAGO**

Dr. COLEMAN. My name is James Coleman. I am at the University of Chicago. I have been principal investigator for a study of the Nation's high school sophomores and seniors, sponsored and largely designed by the National Center for Education Statistics of the U.S. Office of Education.

This study follows upon a comparable study of 1972 high school seniors. My appearance at the hearing this morning is to report on some of the results of the study that may have some relevance to the proposed legislation.

For purposes of comparison in the research, we divided private schools into two categories: Catholic schools and other private schools. It should be kept in mind that the other private schools, as has been evident this morning, are quite diverse. But they were so small a fraction of the sample that we couldn't examine them separately.

First, it is useful to give a sense of how schools in the public and private schools differ. On matters of discipline, students and principals in the private sector are more likely than students and principals in the public schools to report that their schools have rules about a variety of things.

For example, rules about student dress, and rules that students are held responsible for damage to school property. Students in private schools are considerably more likely than public school students to report that discipline in their schools is effective. And they are somewhat more likely than public school students to say that schools discipline is fair.

Overall, the evidence shows that discipline in the private sector is regarded by the students in the schools as both stronger and fairer than in the public schools.

Students in private schools are considerably less likely to be absent or to cut classes than are those in the public schools.

Catholic students do about one-half again as much homework as do public school students. And students in the group of other private schools do even slightly more.

Now, turning to achievement. The question of whether there is higher average achievement or lower average achievement in the private sector than in the public sector. That question is answered very simply through a comparison of scores on standardized tests in the two sectors.

The answer is that in the areas in which both sophomores and seniors were tested, that is in reading, vocabulary, and mathematics, students in Catholic schools and students in the other private schools scored about two grade levels higher than did students in the public sector.

However, a portion of this difference is due to selection of students into the private sector. According to our estimates, and we estimated in a number of different ways, about one-half the difference the private and public sectors is due to selection, leaving



about one grade level difference due to greater effectiveness of the average private sector school.

There is another difference. This is in the homogeneity of achievement. In Catholic schools, black achievement is closer to that of whites, and achievement of children of high school educated parents is closer to that of children of college educated parents than is true either in public schools or in other private schools. Family background makes less difference for achievement in Catholic schools than in public schools or than in the other private schools.

A second general question we examined was the effect of the private sector on segregation in three areas: race, religion, and income. There is a substantial effect on religious segregation, which would, of course, be greater if more students were in private schools.

But in the other two areas, race and income, there were two counterbalancing effects.

For example, there are fewer blacks in the private sector than in the public sector. This means that the private schools serve, to some degree, to segregate whites off from blacks. But within the private sector there is much less black-white segregation than within the public sector.

The end result, for the Nation as a whole, is that these two forces balance out. And American secondary education is neither more nor less racially segregated than it would be in the absence of private schools.

Even allowing for different ways of calculating, any effects one way or the other are very small. The principal reason is the extensive use of Catholic schools by black families for their children, together with the fact that Catholic schools are less racially segregated than are public schools.

There are, of course, racially segregative effects of some private schools in some localities. But these are counterbalanced by the integrative effects of the Catholic schools.

Of some importance for the proposed legislation, I believe, is the fact that the Catholic schools, though not the other private schools taken as a whole, are especially effective for students from low socioeconomic backgrounds and for minority students.

All together, my principal aim in appearing here is to answer questions which may have arisen for some members of the Senate concerning private schools in connection with the proposed legislation.

Thank you very much.

Senator MOYNIHAN. Mr. Chairman, would you allow——

Senator PACKWOOD. Yes, go ahead and start, Pat.

Senator MOYNIHAN. No, Mr. Chairman, I just want to correct an impression, a misimpression that may have obtained.

Dr. Vitullo-Martin and Dr. Coleman have been invited, the public should know, as scholars, as expert witnesses, neither as proponents or opponents of this legislation. But simply as persons who have done relevant research with respect to it.

Senator PACKWOOD. Pat, why don't you go ahead and start the questions.

Senator MOYNIHAN. Well, thank you.

First of all, that was a striking statement, Dr. Vitullo-Martin, that the private schools have become integrated and the public schools segregated in the central cities.

You said, sir, that you have done a study of the sharing of title I resources by the non-government schools which, the legislation says, would lead you to suppose that there would be a sort of equal per capita receipt or expenditure, as you wish.

Dr. VITULLO-MARTIN. Yes.

Senator MOYNIHAN. You found that not to be so?

Dr. VITULLO-MARTIN. I found that not to be so. Yes.

Senator MOYNIHAN. What would you estimate the per capita spending per parochial school student as against the public school student in Manhattan.

I mean, is it 50 percent, 20 percent, 90 percent?

Dr. VITULLO-MARTIN. Well, in Manhattan, I think, there is a fairness in the distribution, and it is probably as much.

But throughout the Nation, the NIE, National Institute of Education, did a survey. I analyzed the public survey.

Senator MOYNIHAN. Yes.

Dr. VITULLO-MARTIN. That survey suggested 20 percent, the average student got 20 percent of the instructional time that the public school student got. And about half as likely to be served with equivalent levels of need.

Senator MOYNIHAN. In other words, to the degree there is a congressional directive to the Department of Education now, and previously the educational facilities in HEW, to see that the private schools receive a fair share, it has not been carried out.

Dr. VITULLO-MARTIN. It was not carried out at the time of that survey. It is difficult to know whether it has been carried out since because, although mandated, to my knowledge the Department is not studied.

The question of the degree——

Senator MOYNIHAN. But the experience of the first decade was that it didn't happen, and I have to say, sir, it didn't happen because the people in charge did not want it to happen.

Could I ask, you think it may be just as well? You found that the title I directive was not helpful in your judgment as an educator?

Dr. VITULLO-MARTIN. I believe that the title I directives split, divided the attention of public school systems in a serious fashion.

Senator MOYNIHAN. You want to help us with that. Divided the attention?

Dr. VITULLO-MARTIN. There was a Federal, title I, in essence, created a federalized section of the public school system.

Senator MOYNIHAN. Those with low-income students, you mean?

Dr. VITULLO-MARTIN. Pardon, pardon me?

Senator MOYNIHAN. That sector with low-income students?

Dr. VITULLO-MARTIN. I am really thinking of within the bureaucracy, yes.

The students were incidental, as I see that program. But within the school system, the school system was forced to separate itself in half. And there were people who would be paid on the Federal budget who could have no local jobs.

Senator PACKWOOD. I want to interrupt now. I am curious about your statement that the students became incidental.

Dr. VITULLO-MARTIN. Yes.

Senator PACKWOOD. Explain that to me.

Dr. VITULLO-MARTIN. Well, the kinds of services that were delivered, you know, I must say it is difficult to generalize, of course. But the kinds of services that were typically delivered to students were really services that served the bureaucratic needs.

For instance, a good example in New York City is that the paraprofessional parents who are hired from the community are now tenured through the system.

Senator PACKWOOD. Is that right?

Dr. VITULLO-MARTIN. Yes. That the system made decisions to go into a number of auxiliary services rather than emphasize basic instructional services, mostly for manpower reasons, as best as I can determine.

And it's not the sorts of matters the systems like to discuss much because there are problems with—

Senator BRADLEY. Mr. Chairman, is this material documented in your testimony?

Dr. VITULLO-MARTIN. No, the material is perfectly peripheral.

Senator BRADLEY. Could we get some of that information?

Senator PACKWOOD. I am sure that Dr. Vitullo-Martin would be happy to supply it.

Dr. VITULLO-MARTIN. Yes, I would.

Senator PACKWOOD. Thank you.

Senator MOYNIHAN. I wonder if I could turn to Dr. Coleman, who has once again astonished us all and told us just the opposite of what we thought we knew, as it were.

As Dr. Coleman, who is a personal as well as a professional friend, knows, I was much involved in the aftermath of his 1966 report on equality of educational opportunity, which was widely and erroneously read to say that schools don't matter.

In the year-long study we did at Harvard, and in the book that followed, Frederick Mostellar and I said that's not what he said. And if you think schools don't matter, you ought to talk to somebody who's never been to one. You will find that they matter a lot.

But you were, as I understand, indicating several things about the inputs into schools, to use that word, that are measured in public policy, such as the per capita expenditure and the equipment in the science lab and the number of books in the library.

First of all, they are much closer than we thought. And second, you didn't find from those sort of quantitative measures any large impact on educational achievement. Wouldn't that be the case?

Dr. COLEMAN. Yes, that would be the case. The peculiar result, in view of the conventional wisdom at that time, that such physical inputs into education on which a large amount of per people expenditure goes, really made very little difference.

Senator MOYNIHAN. Made very little difference.

But now you have come along, and you have found that there are real differences between schools. Did you study private schools in the report on equality of educational opportunity?

Dr. COLEMAN. No.

Senator MOYNIHAN. I thought not. So this is the first time we have turned to these schools. And you would find, would it not be

accurate to say, that in the main their inputs—per capita expenditures, size of class, teachers, degrees—would be very much less?

I mean the per capita expenditure is about half, roughly, usually less than half that of the comparable local public schools, is it not?

Dr. COLEMAN. Yes. The per capita expenditure in the Catholic schools is considerably lower than that in the public schools. And it is very diverse in the other private schools.

Senator MOYNIHAN. Of course. You go from a very high to a very low per capita expenditure. But in those low expenditure schools you find an increase in 1 year in grade achievement at half the price.

Does that mean that the less you spend the more you get?

That is about the level of logic that was applied to your first study. I am helpless with this. You find that there are characteristics of the school that aren't measured in terms of these standard formulas—how much per capita, how many students in a class, and so on.

Dr. COLEMAN. That is true. I think that it is something that we should have begun to understand as a consequence of another study, the International Study of Educational Achievement, which showed not exactly an inverse correlation over Western countries between per-pupil expenditure on education and the achievement. But something not very far from it.

For example——

Senator MOYNIHAN. May I repeat, Mr. Chairman, because the international study found not exactly an inverse correlation between per pupil expenditure and achievement, but something very like it. Isn't that right?

Dr. COLEMAN. Yes; that's right.

Senator PACKWOOD. Well, I want to expand on that.

Do you mean this international study found as a rule of thumb, the less you spent, the higher the level of achievement?

Dr. COLEMAN. The international study found that in those countries, which spent most, achievement was lowest. The achievement of 13-year-olds in mathematics in the United States was lower than that in any other developed country which was involved in the study.

Now specifically, in a comparison between the United States and Japan, Japan spent much less per pupil than the American educational system did, and Japan's achievement was considerably higher.

There are a variety of reasons for that. Some of these have to do with how many years the educational system carries most of the students through.

For example, Sweden was next to the United States in this, in carrying a large number of persons through to age 18. And Sweden was second to the United States in the low level of achievement of 13-year-olds in mathematics.

Senator MOYNIHAN. Fascinating.

Senator PACKWOOD. Bill?

Senator BRADLEY. Dr. Coleman, let me follow up on what you have just said. You mean, in the international study, if you did a per capita expenditure, that in countries that had education

through age 18, then obviously they would be spending more money?

Dr. COLEMAN. Yes; that is true. I should say, Senator Bradley, that I should have paid attention to what Senator Packwood said earlier in his statement that you should never ask a question unless you know the answer.

I should never introduce an example unless I'm well prepared with all the statistics on it. It had just occurred to me at the moment, this result from the International Education Achievement Study, but that is essentially the result.

Senator BRADLEY. So that while—we won't go into it any further, the idea that if you spend less you get more is applicable across societies in which they cover 4 grades, 8 grades, 10 grades?

Dr. COLEMAN. No.

Essentially what I am saying is that a higher degree of educational expenditures is associated with continuing essentially 100 percent of the student body through age 16 or through age 18.

Second, continuing a large proportion of the age cohort up through age 16 or 18 is associated with lower average levels of achievement.

For example, some of the Western European systems are more selective at higher educational grades because of basically a two-tiered secondary educational system.

Senator BRADLEY. So, I mean, can you really draw any conclusions from that? Or do you just say that money among other factors is important—is one among a number of factors determining educational performance?

Dr. COLEMAN. Well, not only this research, but research within the United States has shown systematically that expenditures in education have not been associated positively with achievement.

Senator BRADLEY. Is the reverse true?

Dr. COLEMAN. The reverse has been true internationally. The reverse has not been true within the United States.

Senator BRADLEY. Can you, and I know this is maybe beyond the interests of the committee in this piece of legislation, but can you determine what factors will set educational performance. If you say, take money aside, say you need a certain amount of money. But beyond that, you don't always—you get the situation that Dr. Vitullo-Martin referred to. Where you have bureaucratizing of the school system.

Dr. COLEMAN. There have been a number of studies which, or several studies which have been completed recently. And ours on public and private schools is only the most recent, which show that certain characteristics of how a school is run affect educational achievement—namely, greater academic demands and greater discipline.

These factors affect the experiences of students; they are not the kinds of inputs that used to be seen as principal determinants of educational quality. They are things that happen to students during the time that they are in school. The way the school is run and organized seems to be the central element.

Senator BRADLEY. And this is true across income levels and family background?

Dr. COLEMAN. That is right.

Senator BRADLEY. Thank you.

Senator PACKWOOD. Sparky?

Senator MATSUNAGA. It seems to be, Mr. Coleman, that comparison on an international level would involve so many other factors than money, that to draw the conclusion as we seem to have drawn here—that the less money you spend, the better the degree of education—is to me, at least, unacceptable.

The degree of discipline exercised at the Japanese language school was such that you were forced to study. If you didn't study, you were ostracized—even beaten up in the Japanese language school.

Then the parents are notified about your behavior. The teacher accompanied you home, and in the presence of your parents, in your presence, told the parents what your behavior was, whether good or bad.

Of course, coming from the old school, the old type family, well if the reports were bad, then you get it not only at school but at home.

I think that these are some of the factors that need to be considered. And then when you base it strictly on math, or arithmetic. The old sangi tu in Japanese school, that is the measurement of your intelligence.

So that unless you master arithmetic, you are stupid. So that is what you try to master first.

These are the things that you need to consider. I don't think that is a fair comparison, really.

Dr. COLEMAN. Senator Matsunaga, I think the comparison is interesting especially in one respect. And that is that what you report also describes the differences that we found between schools which were performing well—whether private schools or public schools—and schools which were not performing well.

Discipline at a much lower level of discipline than you describe, but nevertheless, a real difference, in the degree of discipline that existed in the school, and the degree of academic demands that are made in the school.

And that is as true within the public sector as it is between the public sector and between the private sector, and just as it is between one country and another.

Senator BRADLEY. Mr. Chairman, may I ask one other question? And I'd like to ask each of you, because you have each said it in different ways.

Is it possible to identify two or three areas, or give two or three examples of where Federal aid to education has not succeeded. And has indeed perhaps had the opposite effect.

For example, you made the point that title I actually in some cases didn't help the intended purpose of the bill, or the legislation, or the legislators. But indeed, had the reverse effect.

Could you share some of your concerns with the committee?

Dr. VITULLO-MARTIN. I would reemphasize that particular example. That title I was locally designed. And yet it was subject to State and Federal regulations channeled down through it.

So there tended to be shaping within regions, shaping within States that people shared.

One of the problems that occurred was that title I was a program that emphasizes specialist training. So children were pulled out of a regular classroom into a special title I classroom. The regular classroom ended up not doing anything for that period because they lost two-thirds of their students.

In other words, there was a shifting around, but there was no real net increase in any form of instruction. And in fact, what it did was multiply the number of teachers in the classroom.

That sort of program tended not to have much effect. So that would be one kind of—

Senator BRADLEY. My question is, in the study, you talk about the discipline and the absentee rate, and all of these issues which are in some senses determinative of performance.

And my question is, is there any way that Federal involvement with the school system has worked against the establishment of discipline or encouraged absenteeism, or any of the other factors that are nonmonetary. But are in part determinative of performance?

Dr. COLEMAN. Let me give an answer to that, as follows. I can't say anything more than what casual experience and casual observation would suggest.

My general impression is that there have been a variety of Federal actions which have had this effect. That is, which have made it more difficult for schools to carry out their mission.

Specifically, in disciplinary ways. But my evidence is really not systematic evidence. And it is based only on casual observation. So I really hesitate to say more.

Senator BRADLEY. But what are your casual experiences that would lead you to conclude that?

Dr. COLEMAN. Well, I've done some work with respect to school desegregation. The way in which school desegregation has been carried out in many systems, and the way in which it has been mandated, through court decisions in many cases, has been really inimical to the achievement of both blacks and whites, specifically through the kinds of discipline problems that were generated.

Not that school desegregation should not have been carried out. But rather, that it was carried out in a hurry, it was carried out to meet some deadline, it was carried out in a way that was not, that made this extraordinarily difficult task not be accomplished very well.

That is one example. Another example in which I have less information has to do with Public Law 94-142—the bill having to do with handicapped children.

That bill involved mainstreaming insofar as is possible of emotionally disturbed children. This has the effect of putting into a classroom the one or two children that can disrupt that whole classroom.

Senator BRADLEY. Thank you, Dr. Coleman.

Senator PACKWOOD. We will have another round of questions, but I want to remind everyone that we have two more panels to put on this morning.

Senator Moynihan?

Senator MOYNIHAN. Mr. Chairman, I just wanted to see if we couldn't get Dr. Coleman to sum up his findings.

Both of you have made remarkable presentations. But there are two statements. One is that, controlling for background, the private schools appear to have one grade level difference due to greater effectiveness of the average private sector school.

So you have found that schools make a difference?

Dr. COLEMAN. That is right.

Senator MOYNIHAN. You haven't necessarily isolated what it is about them. But you begin to think you know something, don't you?

Dr. COLEMAN. Well, we have begun to isolate what it is about them that affects achievement. When we look at schools within the public sector, that differ in the ways that the private schools differ from the average public school, in the area of homework and course demands, and in the level of disciplinary demands—we find the same achievement differences wholly within the public sector.

Senator PACKWOOD. Is that in your recent report?

Dr. COLEMAN. Yes; it is.

Senator PACKWOOD. That finding? Within the public schools. Given the same strata, the same background, the same draw—

Dr. COLEMAN. That's right.

Senator PACKWOOD. Discipline and homework.

Dr. COLEMAN. That's right.

Senator MOYNIHAN. And then, one other thing. This, I mean, we are learning here. I guess we are reinventing the wheel.

We are finding that if you do twice as much homework, you learn more. You know, that is what social science is for. But there is something even more striking here.

You say here that in Catholic schools, the achievement of children of high school-educated parents is closer to that of children of college-educated parents. Family background makes less difference for achievement in Catholic schools.

That is an extraordinary finding. I don't think the history of educational research has previously ever found such a phenomenon, has it, Jim?

Dr. COLEMAN. I think it has not. And one of the reasons is, I think, it is only in the post-World War II period that the public school system has diverged as much as it has between elite, suburban schools, and inner-city schools.

In other words, there has come to be much more of a stratification within the public school sector than there ever was in the past.

Senator MOYNIHAN. But even so, and I see that Dr. Vitullo-Martin agrees, just in terms of something very important. Family background has predicted 60 percent of educational achievement or more. Has it not?

Dr. VITULLO-MARTIN. Yes.

Senator MOYNIHAN. I mean, it just doesn't matter where you go to school. It is a matter of where and whether your parents went to school.

When you get schools that can bring the educational achievement of high school parents up to a level of those college parents, you have got yourself schools making a real social difference, don't they?



Dr. COLEMAN. That's right. This was an extraordinary result which I did not expect.

Senator MOYNIHAN. No. No one wrote or predicted it.

Dr. COLEMAN. I don't think anyone would have predicted it.

Senator MOYNIHAN. Mr. Chairman, I tell you. Something is new under the Sun. A rule has been broken. The rule that family background accounts for 60 percent of educational achievement has turned out to be not so.

And these are the schools that people are going around being so difficult about.

I thank you, gentlemen. I think that is very important.

Senator PACKWOOD. Senator Bradley. Any further questions?

Senator BRADLEY. Just one further comment.

If we can isolate again the factors. It is the amount of schoolwork and the discipline.

Is there any other factor? I mean, is there, in your work, any greater sense of being a part of a community?

Dr. COLEMAN. Well, Senator Bradley, all I can say is the kind of thing that researchers always say——

Senator BRADLEY. I mean, you have told us about the stick. Is there a carrot?

Dr. COLEMAN. That is for the next study. The problem is this. The kinds of results that I describe, and that you just restated, are results which only came out in the analysis, and which were not really part of the design of the research.

That is, the research was not designed to examine the question of exactly what is it about schools that do make this difference. So we didn't measure some of the kinds of things that you are suggesting. My own hunch is that there are certainly other things besides the two major things that I mentioned. Among them, perhaps, things having to do with a sense of community. But, that we simply didn't measure.

Senator BRADLEY. Did you want to say something?

Dr. VITULLO-MARTIN. Yes. I did do a study of Catholic inner-city schools. And of course it was compared to nothing. It was a study of Catholic, inner-city schools.

There, we found that there was a very great involvement of the parents in the school that was literally required by the schools. So that there was an extraordinarily close connection. Parents having to, for instance, spend an hour a night with homework with their children.

And when they themselves weren't prepared for that, having to take academic instruction on Sundays. So we saw that. But, I don't know that that doesn't exist in public schools.

Senator BRADLEY. Thank you, gentlemen.

Senator PACKWOOD. Gentlemen, thank you very, very much.

Dr. VITULLO-MARTIN. Thank you.

Dr. COLEMAN. Thank you, Mr. Chairman.

[The prepared statements of the preceding panel follow:]

Oral Presentation to the Senate Finance Subcommittee Hearing

On Tuition Tax Credits, S. 550, June 4, 1981

Dirksen Senate Office Building, Rm 2221 -

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My name is Dr. Thomas Vitullo-Martin. I am Director of Research for Metroconomy, Inc., a not-for-profit research and management consulting firm located in New York City. I am a public policy analyst and for the past several years have examined the organization, governance and financing of private schools, and in particular of inner-city private schools, and have examined the impact of private schools on the goals of public policy. I am an independent researcher, and am not affiliated with any organization of private schools. The research on which I am drawing for this presentation has been funded in part by the Ford Foundation, the National Institute of Education, and the Pacific Institute. In my remarks today I will be drawing from a longer and more detailed argument which will appear as part of a book to be published later this year by the Pacific Institute and Ballinger Books.<sup>1</sup>

I will confine my comments to three points: the constitutionality of tuition tax credit aid; the desirability of aiding those who now use private schools; and the need for a general reform of the tax treatment of educational expenses. Constitutionality of Tax Credit Aid. Many of those who spoke in opposition to tuition tax credit proposals in 1978 argued that tax credits were unconstitutional because they amounted to direct aid to religious institutions. Tuition tax credits are no more direct aid to religious schools than the investment tax credit is direct aid to companies manufacturing business equipment. Certainly the tax credit produces an increased demand for services offered by the private school--and thereby may increase its income--by we would not normally consider an investment tax credit to Standard Oil for a new computer system as federal aid to IBM. So we should not consider a tuition tax credit to the Jones family as aid to Manhattan Country Day School, or to St. Patrick's.

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1. Robert B. Everhart, editor, The Public School Monopoly: Education and State in American Society, (The Pacific Institute for Public Policy Research, San Francisco, California, and Ballinger Books, Cambridge, Massachusetts) Forthcoming, 1981.

The tax credit will aid private schools indirectly, by encouraging their use by parents, but will not give direct grants to the schools. The distinction is important for both constitutional and practical political reasons, and opponents of the measure have tended to blur it. While the constitutionality of direct grants to private schools is relatively murky, the constitutionality of indirectly aiding religious organizations through the tax system is already well established. It is settled practice to permit individuals to deduct contributions to churches from their taxable income. For wealthy taxpayers, whose incomes reach the 50% tax bracket, the effect of such a deduction is indistinguishable from a tax credit of the kind proposed in this bill. Ironically, the only contributions to churches that are not deductible are those that can be construed as tuition, or as payment for a specific service. Contributions for the general support of the religious activity are deductible.

The reason for excluding tuition from those expenses that can be deducted from taxable income has nothing to do with religion. The rule is that if the education is not directly related to some business purpose--if it is not, in other words, a business investment for immediate gain--it is not tax deductible.

A tax credit is simply a more even-handed tax deduction. The value of a tax deduction rises with an individual's tax bracket. For the same expenditure, the least benefit goes to the lowest income family, the most to the highest. A 50% tax credit, in effect, equals out that difference; both low and high income families receive the same benefit. The cap on the tax benefit, which permits a maximum credit of \$500 after 1983, makes the bill's benefits proportionately greater for lower- and middle-income families than for higher-income families, because the latter typically pay higher tuitions in private schools.

I said earlier that the fact that the tuition tax aid goes directly to the family, and not to the institution, is important for practical political

reasons as well. The arrangement will greatly reduce the ability of the federal government, in future years, to use the tax credit as a device to regulate the private schools. It is much easier to withhold federal funds from a few individual private schools than to refuse tax credits (and therefore collect balances due the IRS) from several thousand families using them. The government's regulations will be more judiciously considered than some promulgated in recent times for public school systems.

Should the Senate consider encouraging the use of private schools through changes in taxation policy? I agree with the critics of tuition tax credits that the tax change will encourage an increase in the use of private schools. That in itself is not an indictment of the proposal. To decide whether the change is desirable; we must look at what the private schools that exist today are like and how the proposed change will affect them, how it will affect the public schools, and how it will affect the development of a society in which students with a desire to learn are not held back in developing their full intellectual potential by the accident of their family's low income.

As everyone who will testify before this committee on the characteristics of the private schools and their students will say, there is not much information available. In part this is because research is difficult and costly, but most of all it is because the Department of Education, despite requirements in the 1978 Education Amendments and the School Finance Study Project that the data be collected, has failed to design or initiate the necessary studies. Nevertheless, some good work has been done by the Bureau of Census and the National Center for Education Statistics, and high quality statistics are available from several of the private school systems.

The critics of tax credits suggest that private schools are elitist, racially and ethnically segregate their students, and further the segregation of the public systems. The suggestion is convenient at least, because it deals with

the fact that the public schools in the North and West have become more segregated throughout the decade. The problem for the thesis is that, for more than a decade, private schools have been increasing their enrollments of minority students. The movement has been totally voluntary, and has occurred even though the federal and state governments have offered no incentives to private schools to accept minority students. Federal income taxation policies, which this bill seeks to change, have made the enrollment of minorities in private schools more difficult.

In 1968, only 3.5% of private elementary school students were black, but by 1979, 8% were black. If black students had been proportionately divided between public and private schools, these schools would have been 14% black in 1969 and 15% black in 1979, matching the percentage black in the elementary school-aged population. Private schools fell short of these goals, but made remarkable progress in closing the distance by almost doubling the proportion of blacks in their schools in the decade. The change in Hispanic enrollments is no doubt even more dramatic, but existing census data does not permit us to describe it.

TABLE 1: PERCENTAGE CHANGE IN BLACK ENROLLMENTS IN PRIVATE SCHOOLS, 1969-1979

<u>Level</u>	Percentage Black, 1969		Percentage Black, 1979	
	<u>School-aged Population</u>	<u>Private Schools</u>	<u>School-aged Population</u>	<u>Private Schools</u>
Elementary	14%	4%	15%	8%
Secondary	12%	5%	15%	7%

Source: Bureau of Census, Current Population Reports, "Population Characteristics," Series P-20, No. 355, Issued August, 1980.

In any event, perfect distribution of minorities in private schools is an inappropriately high standard. First, each of the two largest private systems--Catholic and Lutheran--is run by a church whose membership is only about 2% black. To enroll black students, these church-operated schools--which account for about 65% of all private school enrollments--would have had to change traditional policies of orienting education services to members of their own religion. They

have begun to do so--approximately 9% of Catholic school students are now non-Catholic--but the process is slow. Second, private schools are not evenly distributed throughout the country, but are concentrated in cities, especially cities in the Northeast and Midwest. Minorities are still concentrated in the rural areas of the South and the Southwest. While 55% of all minority students lived in the South and West in 1977, these regions enrolled only 35% of private school students. Hence, for private schools to enroll a perfect proportion of minority students, they would have to enroll higher proportions of minorities than the public schools in the areas where they are located.

Third, because no public subsidies exist for private schools, they must charge tuition or raise revenues from contributors. Most private schools do both. Minorities as a group have lower incomes, and are more likely to be priced out of the private schools. Catholic schools raised average tuitions from \$54 per year in 1969 to about \$240 in 1980, an increase of almost 450%. Schools serving racial minorities raised tuition faster and to higher levels because they lacked the parish membership necessary to provide the kind of subsidies that permitted parish schools their traditionally low tuition. Catholic schools serving blacks have average tuitions and fees closer to \$500. Lutherans report similar tuition pressures.

Minorities should be increasingly priced out of the private schools, not enrolling in record numbers. Minorities are increasing their levels of private school enrollment because of the efforts of private schools to provide scholarship support and because minority parents are willing to spend a greater portion of their income on education--for private school tuition--than the average family is asked to spend.

The racial enrollment statistics I have presented understate the actual minority enrollments in private schools by leaving out non-black Hispanics and recent European immigrants. Because of the way the census data has been gathered in the past, it is not possible to discuss the enrollments of these groups simultaneously with those of blacks and other racial minorities. The statistics collected by the private schools themselves provide a better picture, though unfortunately

no system reports any information on European or other immigrant minority enrollments.

Between 1970 and 1980, Catholic elementary schools increased their minority enrollments from 11% to almost 20%, and secondary schools from 8% to 15% minority. Catholics enroll a higher proportion of Hispanics than the public schools, and the Lutheran secondary schools a higher proportion of blacks than the public schools. In the West, Catholic schools often enroll higher percentages of minorities than the public systems. In California, for example, minorities made up 44% of Catholic school enrollments, but only 38% of public enrollments.

The Lutheran Church, Missouri Synod, has reported comparably high concentrations of minorities in its schools. In 1978, its elementary schools were 12.5% minority (most of these were not Lutherans) and its high schools were 16.3% minority (14% black), a slightly higher proportion of blacks than in the high school population nationally.

TABLE 2: CHANGE IN CATHOLIC SCHOOL ENROLLMENT, BY ETHNICITY, 1970-1980

<u>Elementary</u>	1970-71		1980-81	
	<u>Number</u>	<u>%</u>	<u>Number</u>	<u>%</u>
American Indian	18,000	.5%	7,300	.3
Black American	172,000	5.1	200,300	8.8
Hispanic American	177,900	5.3	199,300	8.8
Asian American	18,300	.5	42,000	1.9
All others	<u>3,969,300</u>	<u>88.6</u>	<u>1,820,400</u>	<u>80.2</u>
Total	3,355,500	100	2,269,300	100
 <u>Secondary</u>				
American Indian	2,400	.2	2,400	.3
Black American	37,500	3.7	52,600	6.3
Hispanic American	38,600	3.8	56,700	6.8
Asian American	5,200	0.5	10,100	1.2
All others	<u>924,400</u>	<u>91.8</u>	<u>715,200</u>	<u>85.4</u>
Total	1,008,100	100	837,000	100

Source: National Catholic Education Association Data Bank, Statistical Report On U.S. Catholic Schools, 1980-81.



In the past decade, the schools of the National Association of Independent Schools (NAIS) have doubled their minority enrollments, while increasing their total enrollments by only 30%. Put another way, 15% of the increased enrollments in these schools in the decade have been minority students.

Minority Enrollments in Urban Private Systems. The growing importance of private schools to minorities is most dramatically evident in the statistics for selected private systems serving cities with large minority populations. In several Catholic systems, the portion of the schools within the central city are approaching or have surpassed 50% minority enrollments. For example, the New York Archdiocese's New York City Catholic Schools (in Manhattan, the Bronx and Staten Island) are 53.2 % minority and the high schools 33% minority. The percentages would be higher were it not for the effect of near-white Staten Island. The archdiocese's Manhattan elementary schools, for example, were 79.1% minority. The Brooklyn Diocese's schools, which serve Brooklyn and Queens, have lower proportions of minorities (as do those boroughs), but their elementary minority enrollments have been increasing and have reached 34%--18% Hispanic and 16% black. And minority enrollments have increased in absolute numbers even though the Catholic system has closed 28 schools since 1972.

TABLE 3: ETHNIC ENROLLMENTS IN NEW YORK CITY CATHOLIC SCHOOLS, 1979-1980

	<u>Elementary</u>		<u>Secondary</u>	
American Indian	75	.1	19	.1
Black (non-Hispanic)	11,392	17.5	3,035	10.5
Hispanic	20,506	31.6	5,802	20.
Asian American	2,601	4.0	507	1.8
All others	30,406	46.8	19,630	67.7
Totals	64,980	100	28,993	100

Source: Unpublished tabulations, Archdiocese of New York.

The Catholic schools of Chicago have experienced similar concentrations of minority students. Chicago's Catholic elementary schools are now 46.4% minority; its secondary schools are 30.5% minority.

TABLE 4: ETHNIC ENROLLMENTS IN CHICAGO CATHOLIC SCHOOLS, 1979 -1980

	<u>Elementary</u>		<u>Secondary</u>	
American Indian	64	.1	59	.2
Asian Americans	2,584	3.2	481	1.4
Black (non-Hispanic)	22,469	27.5	5,888	16.9
Hispanic	12,723	15.6	4,175	12.0
All others	43,772	53.6	24,189	69.5
Totals	81,612	100.	34,792	100.

Source: Unpublished tabulations, Archdiocese of Chicago

The San Francisco Catholic elementary schools are 57.7% minority and 20% non-Catholic; the secondary schools, 43.5% minority

TABLE 5: ETHNIC ENROLLMENTS IN SAN FRANCISCO CATHOLIC SCHOOLS, 1979-80

	<u>Elementary</u>		<u>Secondary</u>	
American Indian	25	.2	28	.4
Asian American	3,359	24.1	787	11.4
Black (non-Hispanic)	1,718	12.3	556	8.
Hispanic	2,939	21.1	1,243	17.9
White (non-Hispanic)	5,905	42.3	4,315	62.3
	13,946	100.	6,929	100.

Source: Unpublished tabulations, Archdiocese of San Francisco

The Catholic secondary school statistics in these cities show lower minority enrollments for several reasons. First, secondary schools increase their minority enrollments gradually, several years after their initial enrollments in elementary schools, as these students move up the grade levels of the system. Second, tuitions at the secondary schools in these cities average at least twice the elementary school tuitions, but can be as much as five times as great. Tuitions in New York City, for example, average \$800. Third--and most interesting for those concerned with racial integration--private schools have established a reputation for superior performance that attracts white students back to schools, even those in racially changing neighborhoods. For instance, Cardinal Hayes High School which serves the South Bronx--a heavily Hispanic and black area of New York--has maintained a relatively stable 18% white enrollment for

several years. In 1979, the school attracted 245 white students from areas as distant as middle and upper-middle income Riverdale, Bronxville, and Pelham Bay. It is not surprising that a school with a reputation for quality can hold or attract at least some white students, since that theory is the basis for magnet-school desegregation plans that have been attempted in public schools. At least in some instances, it is the private school's success at holding white students and remaining integrated that keeps down the percentage of minority students attending.

This is an important observation. Private schools, as well as public, can help a city to maintain an integrated population because they can hold racially mixed communities together.

Class integration in private schools. As private schools have been increasing their minority enrollments, they have also been becoming more economically integrated. In the Northeast, for example, where private schools enroll 14% of all students, the statistics show that private schools are used by a relatively even range of income groups, although there is some evidence that lower-income students are priced out of private schools to some extent.

TABLE 6: K-12 ENROLLMENT IN NORTHEASTERN PRIVATE SCHOOLS, BY FAMILY INCOME, 1975

Family Income	Total Enrollment (in 1,000s)	Private School Enrollment (in 1,000s)	% of Families in Private Schools	% of Private School Enrollment
Under \$5,000	842	58	7%	4%
\$5-9,999	1,862	189	10%	12%
10-14,999	2,235	259	12%	17%
15-19,999	2,214	329	15%	22%

TABLE 6: (continued)

<u>Family Income</u>	<u>Total Enrollment</u>	<u>Private School Enrollment</u>	<u>% of Families in Private Schools</u>	<u>% of Private School Enrollment</u>
20-29,999	2,529	431	17%	28%
30,000 or more	1,220	253	21%	17%
<b>Totals</b>	<b>10,902</b>	<b>1,519</b>	<b>14%</b>	<b>100%</b>

Source: Bureau of Census, Survey of Income and Education, "Special Tabulation," Congressional Record, May 20, 1978, pp. S4156-4162.

The private schools are able to enroll significant numbers of lower-income students through a combination of subsidies that lower tuitions for everyone, and scholarships. The NAIS schools, which are most dependent on tuitions for income and have the higher average tuitions, have increased the proportion of students on scholarships by 50% in the decade, with 16.4% of their students receiving financial assistance based on need in 1980-81. The 776 member schools now offer families almost \$100 million in need-based financial assistance, up from an estimated \$20 million in 1970.

I have so far argued that private schools have desirable economic and racial characteristics, and that public commitment to racial and economic integration would not be sacrificed through tuition tax credit incentives for their use. Nevertheless, some have raised the objection that the movement of families from the private to the public schools will damage public education. These critics seem to assume that the more people who use public schools, the greater the support for them. This assumption goes against the grain of recent experience. Private school enrollments were at their high-point in 1965, when they enrolled 14% of the nation's elementary school students, but the proportion and the absolute number of private school students has declined annually since then. In 1965, the Catholic and Lutheran systems together accounted for almost 95% of all private school students; today they account

for only 62%. Catholic schools declined a remarkable 43% of their enrollments since 1965, and although some of this decline can be attributed to a change in Catholic birth rates, most resulted from a movement from Catholic schools into public schools. This transfer of students into public schools appreciably reduced the impact of the decline in birth rates on public schools for a number of years.

There have been a number of reasons for the shift from Catholic to public schools, and problems of tuition and financing are high among them. Federal taxation policy exacerbated these difficulties. Prior to the early 1960's, Catholic and Lutheran schools did not rely heavily on tuitions for the income to operate their schools. In 1965, when Otto Kraushaar made his survey of private school finances, tuitions produced only 18% of the income of Lutheran elementary schools and 25% of Catholic schools'. In both systems, tuitions were a more important source for secondary schools, but in both they averaged under 50% of total revenues at the secondary level. For most students--that is, for perhaps more than 4 million out of the 5 million elementary school students in 1965--tuitions were under \$50 per year. And for perhaps 1 million of the 1.3 million secondary students in private school, tuitions were under \$200 per year.

As a practical matter, this meant that most of the cost of private education was raised from contributions, and was tax deductible. The federal government received little tax income from the operation of private schools. It permitted the deduction of most of the money that was spent to operate these schools. As the mix of private schools began to change, and schools relying more heavily on tuition increased in number, while the church supported parish schools began their long decline, income tax policy began to have a serious effect--increasing the financial pressures on the private schools. The more the private sector schools turned toward tuition as their source of revenue, the greater the impact of federal taxation. The federal government began

to obtain substantial revenues from the funds spent to operate private schools.

An example makes the point clearer. A Catholic high school in Cincinnati charged \$200 a year tuition in the early 1960s. Today its tuition is \$2400. The school continues to draw from the same kinds of families that it did twenty years ago, but now inflation has given that family a nominally much higher--and higher tax bracket--income. In 1960, the typical family in the school would need to earn only \$220 to produce the after-tax income of \$200 needed for tuition. But in 1980, the typical family would have to earn about \$3,200 to produce the \$2,400 needed after taxes. The federal government cut is now \$800.

The effect of the tax credit on this situation is to slightly redress the balance. If we add a \$500 tax credit to our example, the family has only to earn \$2,700 to pay the \$2,400 tuition bill. The federal government is still taking money, but now its share is reduced to \$300, the money it receives of that portion of the family's income that goes to support the operation of the school. In sum, the basis of financing the private school sector has switched in the past decade, from contributions (which were tax deductible), to a much greater reliance on tuition (which is not). With the switch came federal taxation of the income used to support the private schools (reflecting the fact that contributions are deductible and tuitions are not). Tuition tax credits return a portion of that new and extra tax burden back to the families supporting the private schools. Tax credits are not so much aid to families to use private schools as a lessening of the disincentives that the current tax system imposes on private education.

Tax Reform. Finally, critics of the tax credit proposal frequently complain that aid to parents using private schools will exacerbate the problem of the cuts imposed by the federal budget reductions on public schools, and that the

net effect of the tax credits will be to take funds from the public school minorities and give them to the more advantaged students in the private schools. In a sense, their complaint is that the system of aid through the tax deduction system is heavy handed, and helps the wealthy disproportionately. The opponents are particularly distressed that parents choosing private schools with low proportions of racial minorities might be aided through the tax system in either making their choice or operating the schools. The objection is a good one, but it should not be applied solely to private schools. The most segregated schools in America, along both racial and income lines, are public schools, particularly those in the high-income suburbs outside many metropolitan areas. These schools in particular are aided by the existing system of tax deductions, and the higher the median income of the district and the more homogeneous its population, the greater the portion of local education spending paid for by the federal government.

Given the fact that private school tuitions amounted to about \$3 billion of the \$5 billion it cost to operate the schools, the cost of the tax credit to the Treasury in forgone tax revenues should be about \$1 billion (when the credit reaches the \$500 level). At the same time local and state governments raise about \$100 billion in current dollars to operate their public school systems, and the taxes supporting these schools are all deductible on the federal income tax obligations of local taxpayers. We can conservatively estimate the value of this tax aid to the public schools as \$15 billion or more, thus dwarfing all other federal grant programs to public schools. In the wealthiest districts, the federal aid can exceed 50% of local expenditures, which is a tax credit without a cap. I modestly propose that public schools be brought under the same rules that the IRS recently proposed for private schools, in order for them to retain their tax exempt status:

like private schools they should offer scholarships to minorities and lower income families if they do not have a sufficient number residing within their borders to effectively integrate their schools. The federal sanction would be the removal of the privilege that local taxpayers exercise when they deduct local school taxes from their federally taxable income.



STATEMENT OF JAMES S. COLEMAN BEFORE THE SENATE FINANCE  
SUBCOMMITTEE HEARING ON TUITION TAX CREDITS

June 4, 1981

My name is James Coleman. I am Professor of Sociology and Education and the School of Social Service Administration at the University of Chicago. I have been principal investigator for a study carried out by the National Opinion Research Center at the University of Chicago of the nation's high school sophomores and seniors. The study is sponsored and largely designed by the National Center for Education Statistics of the U. S. Department of Education. It is a multi-purpose study, following upon a comparable study of 1972 high school seniors, to learn both about problems of secondary education and problems in the transition to post-secondary activities. One of the initial analyses which I and others carried out was a comparison of the functioning of public and private schools. My appearance at this hearing is to report on some of the results of that comparison that may have relevance to the proposed legislation.

For purposes of comparison, we divided the private schools into two categories, Catholic schools and other private schools. It should be kept in mind that the other private schools are quite diverse, including a number of religious schools, as well as the so-called "independent" elite schools. It also should be kept in mind that the number of schools and students studied in the private sector is much smaller than that in the public sector. In the public sector there were 51,339 students in 894 schools; in the Catholic sector, 5,528 students in 84 schools; in the other-private sector, there

were 1,182 students in 27 schools. The latter were supplemented, however, by 11 especially high-performance private schools.

First, it is useful to give a sense of how schools in the public and private sectors differ. Public high schools (grades nine through twelve) enroll over 90 percent of the total high school population and have an average of 750 students, while the Catholic schools enroll about 6 percent and average about 500 in size; and the other private schools enroll between 3 and 4 percent and average only about 150 in size. The pupil-teacher ratios in Catholic and public schools are very similar (though slightly higher in Catholic schools), but in the other-private schools they are less than half as large.

Both Catholic and other private schools have much lower participation in federal programs than do public schools. Of the Elementary and Secondary Act programs, the only program that more than a small minority of private schools receive aid from is Title 4B, aid to libraries. The public-private disparity in aid from the Vocational Education Act is even greater. Very few private schools participate in any of these programs, while for nearly all the VEA programs examined in the study, a majority of the public schools were participating.

On matters of discipline, students and principals in Catholic schools are much more likely than students and principals in public schools to report that their schools have rules about student dress and that students are held responsible for damage to school property; students and principals in the other private schools report this more frequently than in public schools but less than in Catholic schools. Students in Catholic schools are much more likely than public school students to report that discipline in their school

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is effective, with the other-private schools again in between. And both Catholic and the other private school students are somewhat more likely than public school students to say that school discipline is fair. Overall, the evidence shows that discipline in the Catholic and other-private schools is both stronger and fairer than in the public schools, with discipline in the Catholic schools being strongest and that in the other private schools most fair (as perceived by the students).

Students in Catholic schools are much less likely to be absent or to cut classes than are those in public schools (again with the other private schools in between and closer to the Catholic schools) and public school principals are much more likely to report that absenteeism constitutes a problem in their school than are either Catholic or other private school principals. On other measures of student behavior as well, students in the Catholic and the other private schools show fewer "problems"--as reported either by the students themselves or the principals--than do those in the public schools. Catholic school students do about half again as much homework as do public school students, and students in the other private schools do even more.

In all the above respects, Catholic schools are the most homogeneous, differing least from one another, while the other private schools are most heterogeneous, showing greatest variation in discipline and student behavior.

Turning to achievement, the question of whether there is higher average achievement in the private sector than in the public sector is answered very simply through a comparison of scores on standardized tests in the two sectors. The answer is that in the areas in which both sophomores and seniors were tested (in reading, vocabulary, and mathematics), students in Catholic schools

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and students in other private schools scored about two grade-levels higher than did students in the public sector. However, a portion of this difference is due to selection of students into the private sector. According to our estimates, about half the difference between the private and public sectors is due to selection, leaving about one grade level difference due to greater effectiveness of the average private sector school. In one area, science, the Catholic schools showed no greater effectiveness than the public schools, and in a test of rules of English composition the other private schools showed no greater effectiveness than the public schools. These, however, were exceptions.

Besides the overall difference between public sector and private sector in effects on achievement, there is another strong achievement-related difference--this time between the Catholic schools on the one hand, and the public schools and other-private schools on the other. This is in the homogeneity of achievement: in Catholic schools black achievement is closer to that of whites, and achievement of children's high-school educated parents is closer to that of children of college-educated parents. Family background makes less difference for achievement in Catholic schools.

A second general question we examined was the effect of the private sector on segregation in three areas: race, religion, and income. There is a substantial effect on religious segregation, which would, of course, be greater if more students were in private schools (since even apart from the Catholic schools, the majority of private schools have a religious affiliation). But in the two areas, there were two counterbalancing effects. For example, there are fewer blacks in the private sector than in the public, which means that the private schools serve to some degree

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to segregate whites off from blacks. But within the private sector there is much less black-white segregation than within the public sector. The end result for the ratio as a whole is that these two forces balance out, and American secondary education is neither more nor less socially segregated than it would be in the absence of private schools. Even allowing for different ways of calculating, any effects one way or the other are very small. The principal reason is the extensive use of Catholic schools by black families for their children, together with the fact that Catholic schools are less racially segregated than are public schools.

With respect to income segregation, results are similar, except that here the two forces do not fully balance out. There is a net contribution, though small, of the private sector to segregation by income.

These research results on the effects of private schools on student achievement and on the distribution of students among schools are not, of course, the central issues with respect to legislation on tuition tax credits. They do indicate, however, that in some important respects, the private sector seems to be doing a better job than the public sector in education, and is doing so without extensive contribution to segregation by race or income. There are, of course, racially segregative effects of some private schools in some localities--but these are counterbalanced by the integrative effects of the Catholic schools. Of some importance for the proposed legislation, I believe, is the fact that the Catholic schools--though not the other private schools--are especially effective for students from low socioeconomic backgrounds and for minority students.

Altogether, the principal utility of these research results should be for answering questions which may have arisen for some members of the Senate concerning private schools in connection with the proposed legislation.

Senator **PACKWOOD**. Next, we will have a panel of Willard McGuire, the president of the National Education Association; Dorothy Shields, the director of education of the AFL-CIO, representing the American Federation of Teachers; and Harold Isenberg, the president of the Federation of Catholic Teachers of New York.

Senator Moynihan will be right back. He has just left momentarily, and we will start—again, does the panel want to go in the order that they are on. Do you want to take the NEA first?

All right. Go right ahead.

**STATEMENT OF WILLARD MCGUIRE, PRESIDENT, NATIONAL EDUCATION ASSOCIATION, WASHINGTON, D.C.**

Mr. **MCGUIRE**. Thank you, Mr. Chairman.

I am proud to summarize my submitted testimony on behalf of the National Education Association, an organization that enrolls the overwhelming majority of America's teachers.

The National Association is unalterably opposed to, and will combat with all the resources at our command, tuition tax credits for any level of education, kindergarten through graduate school.

NEA believes that tax subsidies for nonpublic schools through tax credits are bad economic policy, poor public policy, and unconstitutional.

The President has proposed a massive new economic program. Tuition tax credit legislation with potential cost of \$4.7 billion, according to the Congressional Budget Office, runs directly counter to the President's economic program.

Proponents of tuition tax credits to private schools claim that these subsidies are necessary to relieve them of the burden of double taxation.

NEA supports the right of these parents to choose, and to pay for, their children's education in nonpublic schools. Enactment of tuition tax subsidies for nonpublic schools would, in fact, be dual taxation.

All would pay taxes to subsidize the privilege, affordable and available, to very few. Under the proposed legislation, tax credits could amount to \$500 per child.

The Federal Government contributes nowhere near \$500 per child for those enrolled in the public schools. In fact, before the massive budget cuts in education, less than \$200 of the current average per pupil expenditure in public schools came from Federal sources.

Private schools tax credit of \$500 would benefit the parents of 5.6 million students. The parents of the 43.9 million students in public schools would receive no such tax benefits. NEA does not question whether quality private or parochial schools should exist.

Parents and students should not be denied their right of free choice of schools, nor should the Government subsidize their exercise of that right.

Nonpublic schools tend necessarily toward exclusivity since they exist to serve selected enrollees in some special interest basis, be it creed, sex, economics, intellectual capacity rates, and so forth.

If there were no unique or exclusive purpose, there would be no reason for their existence. The choice provided by tax subsidies for private schools would not be available and accessible to the major-

ity since the actual cost of private school tuition is prohibitive to many.

The real tax break would be for middle and upper income parents who can afford to pay the balance of the tuition bill, that part not subsidized by the tax credit.

Most private schools require up-front tuition payments in the fall. The tax credit applied to an April tax bill will not assist lower and middle income parents to participate.

The public schools are obligated to enroll and to educate all comers, regardless of unaidability, handicap, proficiency or deficiency in English.

Private schools are not mandated to accept children who are handicapped, who are discipline problems, or are otherwise difficult to educate. In fact, only about 2.7 percent of all religious schools provide programs for the handicapped. And only 3 percent of all nonpublic schools offer vocational education.

Tax credits as a Federal policy would promote the success of private schools, allow special benefits through taxes for the wealthier families, and undermine the support public schools through an unfair and unwise competition.

The result would be an educational caste system. Certain extremist groups, which might be encouraged to set up schools, have the constitutional right to free speech and freedom of association.

Never before, however, have they been eligible to operate a school and receive a Federal subsidy. Nor should they be so.

Since tax credits would be given for private school tuition, taxpayers have the obligation to demand that some certification of those schools as legitimate be made.

The Federal Government cannot launch a new multibillion-dollar subsidy program without accompanying regulations and minimum standards. It will be necessary to insure that carelessly granted tax credits not become an additional burden on those paying taxes.

The Federal Government will have to empower an agency to prevent fraud and abuse of the tax credit. Local citizens and their elected public school boards are held accountable for how tax dollars are spent in the public schools.

Taxpayers would have the right to demand the same accountability from private schools benefiting from the Federal subsidy, provided by tuition tax credits.

We view such scrutiny as inevitably running afoul of the excessive entanglement test found impermissible by the court in *Lemmon v. Kurtzman*.

The unconstitutionality of the tuition tax credits scheme for elementary and secondary nonpublic schools is without question, in the light of the Supreme Court's ruling in the *Committee for Public Education and Religious Liberty v. Niquist*.

In closing, let me repeat, the National Education Association is unalterably opposed to, and will combat with all of our resources at our command, tuition tax credits for any level of education, kindergarten through graduate school.

Senator PACKWOOD. And just before Ms. Shields speaks, I assume you would combat them regardless of what the Reagan economic program was.

Mr. McGUIRE. Pardon. What the comment was?

Senator PACKWOOD. You would combat them no matter what. If money for public education was expanding fivefold, you would still oppose tuition tax credits.

Mr. McGUIRE. The fact being, in the Reagan economic program we had the situation of fiscal tightness, fiscal responsibility, and the tuition tax credit program, through loss of revenue, would count billions of dollars—\$4.7 when it was totally enacted and somewhat less than that at a lesser degree.

Senator PACKWOOD. But I want to make sure of your position. You opposed them 3 years ago when we were rapidly expanding public moneys for education. And that really isn't your reason for opposition at all.

Mr. McGUIRE. It is one of the reasons given in the situation. But 3 years ago we were in a different situation with Federal dollars. But given the current situation, we think that it makes a difference in that regard as well.

Senator PACKWOOD. Ms. Shields.

#### STATEMENT OF DOROTHY SHIELDS, DIRECTOR OF EDUCATION, AFL-CIO

Ms. SHIELDS. Good morning. I am pleased to have with me Arnold Canter from our research department, and Steve Copeland from our legislative department.

I am pleased to testify on behalf of the AFL-CIO and its 14 million members in opposition to S. 550.

The working people of America believe now as they believed in the early days of this country that quality public education for their children and for themselves is a priority consideration in the improved quality of life to which we all aspire.

It is the labor movement's proud heritage that we were among the first to advocate the concept of free universal public education. The AFL-CIO is vitally interested in education because we not only represent teachers, administrators, office workers, and maintenance workers, but also because of our children's stake in these public decisions and our members' stake in lifelong opportunities.

For more than a decade, tuition tax credits have been proposed and rejected by the Congress. The concept today is no more worthy of congressional approval than it was in the past.

The tuition tax credit bill, S. 550, that has currently been introduced in the U.S. Senate does not advance education; instead it represents a threat to public education in America.

Combined with already declining enrollments and the cutbacks in both State and Federal support, this bill promises to damage our public schools still further.

S. 550 provides a refundable tax credit for students in the private schools. The credit would be equal to 50 percent of the educational expenses up to a maximum of \$250 in the first year and \$500 per year thereafter.

The Joint Committee on Taxation estimates that S. 550 will reduce Federal budget receipts by \$99 million in the coming fiscal year, \$2.69 billion in fiscal year 1983, and rising to \$6.9 billion in fiscal year 1986.



It should be made clear that we are not discussing educational benefits for children alone. The credit can be used for the taxpayer, his or her spouse, as well as any dependent of the taxpayer.

We should point out that under the Internal Revenue Code, dependents are defined not only as children of a taxpayer but can include brothers, sisters, parents, grandchildren, and in-laws.

In addition, when fully effective the credit will be allowed for graduate students and part-time students of any age so long as they are the taxpayer, spouse, or dependents.

To illustrate, a taxpayer could receive \$500 per year for each dependent, each year from first grade through graduate school. A lawyer, for example, attending private schools all the way through his education—19 years—would provide his parents with \$9,500 worth of tax credits.

If, of course, the family was educating two would-be lawyers, their drain on the Treasury would be twice as much.

Tuition tax credits are an open ended revenue loss at a time when Congress and the administration are trying to balance the budget and cut hard into Federal programs, including a huge 30 percent cut in Federal aid to education.

The AFL-CIO reaffirms its longstanding opposition to tuition tax credits. Were S. 550 to be enacted into law: Tax credits would encourage the establishment of an educational caste system by spurring the exodus of advantaged children while leaving the handicapped and learning disabled—not to mention the poor—behind.

Tuition tax credits would work to return racial segregation to the public schools, thus reversing gains made in school integration.

Tax credits would cost the U.S. Treasury billions of dollars per year in lost revenues, add another open ended tax expenditure item to the budget, which is not subject to normal processes of authorization and appropriations, thus causing increases in other taxes or forcing reductions in direct educational aid programs at all levels.

Taxpayers would be taxed twice: Once to finance public schools and the second time to subsidize a tax credit for nonpublic schools.

Tax credits would provide about four times as much Federal aid per pupil for nonpublic school education as is currently provided for public school education.

Most of the credits 59 percent, would go to families with incomes of over \$25,000 whereas the traditional Federal role in education has been to target assistance to those people and communities where the need is the greatest.

The billions of dollars in lost Government revenue in S. 550, we believe, would only be the camel's nose under the tent. It would not be long before demands to increase credit allowances would increase the drain on the Federal Treasury many times the initial outlays.

Tuition tax credits would lead to the undermining of one of the greatest achievements of American democracy; a school system for all children which will provide them with the education to realize their maximum potential.

We believe it is an obligation of the Federal Government to support the Nation's public schools. Tuition tax credits, unfortu-

nately, divert vital funds to the financing of private schools and represent poor tax policy.

Estimates of the distributive impacts of tuition tax credits were made in 1979, in a report issued by the Office of the Assistant Secretary for Planning and Evaluation of the Department of HEW.

That report lent support to the AFL-CIO's position that tuition tax credits favor those in higher income and are regressive across family income categories.

In its February 1981 report the Congressional Budget Office reached the same conclusion that schools and colleges could use the taxpayers as a conduit by increasing their charges in order to capture a portion or all of the benefit.

S. 550 bases its proposal for tax credits for private elementary and secondary education on a declaration of policy that the Federal Government has a moral obligation to promote private schools. We disagree.

The AFL-CIO believes that Federal aid to education should not be restructured in order to advantage private schools over the public school system. We do believe that Federal aid to private schools as provided in the formula embodied in the Elementary and Secondary Education Act is fair and appropriate.

The AFL-CIO believes that tuition tax credits are a wide departure from the concept of the Federal Government's role as spelled out in the Elementary and Secondary Education Act which targets Federal aid through specific programs.

There are also continuing questions about the constitutionality of tuition tax credits for students who attend private schools.

Since the overwhelming majority of students in nonpublic schools attend church-affiliated institutions, Federal dollars through tuition tax credits would in effect be supporting religious education. This raises serious constitutional questions relating to the separation of church and State.

Several State tuition tax credit proposals have already been held unconstitutional by State and Federal courts. The Supreme Court's *Nyquist* decision finding New York State's tuition tax credit law unconstitutional is clear on this question.

In the words of Senator Ernest Hollings, careful study leads to the convincing conclusion that tuition tax credits:

Would turn our nation's education policy on its head, benefit the few at the expense of many, proliferate substandard segregation academies, add a sea of red ink to the federal deficit, violate the clear meaning of the First Amendment to the Constitution, and destroy the diversity and genius of our system of public education.

Accordingly, we see no reason to abandon the present concept of Federal aid to education, for both public and private school students, established by the Elementary and Secondary Education Act with AFL-CIO support.

The AFL-CIO believes the existing structure of Federal aid which allows participation of non-public-school students on the same basis as students in public schools is the appropriate way to provide for the special needs of all children.

We urge rejection of S. 550 and all other similar tuition tax credit bills.

Senator PACKWOOD. Mr. Isenberg.

**STATEMENT OF HAROLD J. T. ISENBERG, PRESIDENT,  
FEDERATION OF CATHOLIC TEACHERS, NEW YORK, N.Y.**

**Mr. ISENBERG.** Yes.

My sincere thanks to the subcommittee for the opportunity to speak in support of tuition tax credits for non-public-school parents.

I am Harold Isenberg, and I'm a non-public-school educator. I began teaching 15 years ago in Catholic schools in the New York Archdiocese in South Bronx and East Harlem.

I serve as president of the Federation of Catholic Teachers, which represents some 3,000 parish, elementary and secondary schoolteachers in the New York Archdiocese.

My formal testimony, submitted for the record, and my comments here today, concern themselves with tax relief for the parents of nonpublic, elementary and secondary schoolchildren.

We are, of course, well aware that this legislation would be of significant benefit for those paying tuition to the college or university of their choice. In fact, two-thirds of the cost of this bill would aid higher education.

But, the one-third directed toward our parents will help insure the long-term survival of our schools. My organization and I firmly believe that without this type of legislation, the possibility of public school monopoly threatens to become a reality.

Our country was founded on certain fundamental principles. One of the most important of which is freedom of choice.

In business we vehemently oppose monopolies. It does not seem consistent, then, that we should approve of monopoly in education.

Ninety percent of the students in this Nation now attend public schools. Enrollment in nonpublic elementary and secondary schools has slipped from 13 percent to 9 percent, and even with tax credits would probably not go beyond 15 percent.

Senator Packwood has observed that, "if public schools cannot make it with 85 percent of the students, then they cannot make it with 100 percent.

Alternative systems of education, such as nonpublic schools, guard in principle and practice, diversity and freedom of choice in education, just as they reflect the diversity and variety of our communities. Although those who choose private education must be fully aware of the tax base financial structure of these institutions, they must also, in order to exist, obtain equal protection and competition with public schools.

It is strange that competition, which has been a mainstay of the American economy, enabling this Nation to flourish and grow strong, should be considered bad when it comes to education.

Do we really want a monolithic educational system? One which history has shown does not foster a free exchange of thoughts and ideas.

Tax credits take nothing away from public schools, by providing tax relief for parents sending their children to nonpublic schools.

The typical beneficiary of this bill are not the rich, but families with incomes between \$10,000 and \$20,000 annually.

These are the citizens that shoulder the greatest tax burden and acutely feel the inflationary spiral. These are the citizens who find that to exercise their fundamental and constitutional right to edu-

cational freedom of choice, that they must bear a double burden of paying taxes to support public schools, while faced with increasing tuition costs at their own schools.

Tax credits are not an educational issue. They are a tax issue. They do not insure the continued existence or operation of nonpublic schools.

They grant no money to any institution. Rather, they simply allow citizens to keep a portion of their own tax dollar for a specific purpose.

It is not unusual for Congress to grant tax relief to citizens who bear a special burden which benefits all of society. An educated citizenry is in the national interest.

And education is not voluntary. It is compulsory. One of America's strengths has been the diversity of experiences present here.

Unless we really want a dull, homogenous society, we ought to encourage the many sound alternatives available in the non-public-school sector.

The present bill has sufficient safeguards built into it. So that the credit can only be used in connection with attendance at a tax-exempt, non-profit, educational institution that does not discriminate.

Parochial schools, or "neighborhood schools", as Senator Moynihan has accurately described them, are the overwhelming majority of nonpublic schools. Our schools provide quality secular education, and in that sense they are also public schools.

Catholic schools exist for a twofold purpose of offering high-quality academic programs and instruction in religion. No one is asking for reimbursement for the religious part of an education in our schools.

Tax credits would only provide a reimbursement of 50 percent of tuition up to the stated maximum. Ours is the only Western democracy that is yet to develop a way to aid nonpublic education, while retaining the principles of separation of church and state.

There are those who assert that tax credit legislation is unconstitutional. However, this is a matter for the courts to decide. The Supreme Court has never ruled on a Federal tax credit benefit that assists all parents.

Moreover, views expressed by the Chief Justice and some of his colleagues indicate that our High Court may finally be ready to reconsider the injustice long done to nonpublic parents by policy of double taxation.

In our opinion, tax credits are the best and fairest way to enable low-income and middle-income parents to exercise their constitutional right to educational freedom of choice.

Senator PACKWOOD. I would like to ask three questions of Ms. Shields, if I could.

What Mr. Isenberg said about the court never having passed on the Federal tuition tax credit bill, that includes grades 1 through college, is correct.

In your statement you indicate the bill is unconstitutional. But, Senator Moynihan and I think it is constitutional, but how on earth do we find out without passing it?

Ms. SHIELDS. Well, I think what I am indicating in my statement, Senator, is, the court has ruled on some very similar cases and is

giving a very strong indication that this type of assistance to nonpublic schools is not within what was intended.

It is true, if the bill is passed, you may be sure that there will be a challenge.

Senator PACKWOOD. Oh, I know, but I am putting the question the other way around. How are we ever going to find out without passing the bill?

Ms. SHIELDS. I don't think it is necessary that we find out. I think this is a poor bill in terms of tax policy.

Senator PACKWOOD. Well, that is a fair enough argument, to argue on the policy. I am talking about the constitutionality. Both Senator Moynihan and I think it will stand the test, indeed.

We had scholars yesterday that say it will stand the test. We have scholars that say it won't.

How do we find out without passing it? Why should the argument that it might be unconstitutional be raised if there is no way to raise the issue except by passing the bill?

Ms. SHIELDS. Well, I disagree that it is necessary to find out that. I feel that the issue here, as I understand it, is how do we provide assistance to the private schools, to maintain their viability.

We say this is a poor way to do it.

Senator PACKWOOD. We can argue——

Ms. SHIELDS. There are other ways you might provide assistance as embodied in the formula which we mention in ESEA, and if that isn't working, there is nothing to stop from bringing all our resources to find ways to provide that assistance where you won't have this cloudy issue.

Senator PACKWOOD. Let me ask you a factual question, and leave that issue. Did you hear the testimony of Dr. Coleman and Dr. Vitullo-Martin?

Ms. SHIELDS. Yes, I did.

Senator PACKWOOD. On page 3 of your statement, you have this statement.

Tuition tax credits would work to return racial segregation to the public schools, thus reversing gains made in school integration.

What is your factual basis for that statement?

Ms. SHIELDS. I think that we have seen in terms of the last—since the Aid to Federal Education, significant increases in terms of achievement levels, of our minority children.

Senator PACKWOOD. Now we are talking here about racial segregation.

Ms. SHIELDS. Because it——

Senator PACKWOOD. Dr. Vitullo-Martin and Dr. Coleman—their factual statements were just the opposite, that what we have seen is a continuing segregation of public schools, and much more of an integration in the private schools.

I am curious what the factual basis for your statement is.

Ms. SHIELDS. I would have to submit that to you, later, in terms of the——

Senator PACKWOOD. Well, do you have any factual basis for it?

Ms. SHIELDS. Yes, indeed, we have factual basis for it. We would not have put it in there. I will be glad to provide that to you.

Senator PACKWOOD. Do you have a study?

Senator MOYNIHAN. What are they? You said, "Yes, indeed," Now, what is your study?

Ms. SHIELDS. Just give me one moment, Senator.

Senator MOYNIHAN. I will give you all the time that you need.

[Pause.]

Ms. SHIELDS. In terms of the income levels of students about to go to the private schools, they have additional numbers of minority children, but they have nowhere near the majority of the disadvantaged and the minority and the Hispanic children in this country.

The only program that is open to those young people is a quality public school.

Senator PACKWOOD. I heard what you said.

Ms. SHIELDS. We did not have figures from the witnesses before us.

Senator PACKWOOD. From Dr. Vitullo-Martin and Dr. Coleman, we are moving toward segregation in the public schools.

Ms. SHIELDS. They were talking about in one specific city, I believe. But, I do not believe they were talking about having a school system that handles 8 to 10 percent of the total school population in this country, consistently providing for our minority schoolchildren and for those who were economically disadvantaged.

Senator PACKWOOD. Ms. Shields, I am not going to pursue it. I think your statement is utterly without any factual basis. I do not think you have any study that concludes what your statement is.

I think it is a knee-jerk reaction against the bill, and another myth that exists about the composition of private schools and what has been happening to private schools in the last 10 years, in terms of integration, and what has been happening to public schools.

Indeed, the evidence that both Dr. Vitullo-Martin and Dr. Coleman had clearly conclude that your statement is wrong.

But, if you have a study, I would love to have it.

Let me ask you a third question. On page 5:

S. 550 bases its proposal for tax credits for private elementary and secondary education on a declaration of policy that the Federal Government has a moral obligation to promote private schools.

Where do you draw that from, "a moral obligation to promote private schools?"

Ms. SHIELDS. It doesn't use the words "moral" in the——

Senator PACKWOOD. What?

Ms. SHIELDS. In the introduction to the bill——

Senator PACKWOOD. Read what it says in the introduction.

Ms. SHIELDS. Pardon.

Senator PACKWOOD. Read what it says in the introduction.

Ms. SHIELDS. The Congress hereby declares it to be the policy of the United States to foster educational opportunity, diversity, and choice for all Americans.

Senator PACKWOOD. Yes. That is a world of difference, isn't it, from "a moral obligation to promote private schools."

Well, never mind; my time is up.

Senator Moynihan.

Senator MOYNIHAN. Well, Mr. Chairman, there is indeed a difference.

I would like to say, Ms. Shields, it is fortunate this is not sworn testimony. I am serious. I am appalled at the American labor

movement offering such testimony. I am flesh and blood of the labor movement. I joined the Steelworkers when I was 16 years of age. I have a 100 percent COPE voting record.

To have the AFL-CIO come before this committee with this kind of testimony. Now, you said, "Yes, indeed," you do have studies that show, you do have research that shows "that tuition tax credits would work to return racial segregation to the public schools."

Now, what is your evidence? You said, "Yes, indeed." Those were your words. What is your evidence?

Ms. SHIELDS. Senator, I don't recall saying we had research studies. I do—we do believe that the enactment of the tuition tax credit bill would work to the detriment of the public schools.

Senator MOYNIHAN. That's not what you say here. You say "Tuition tax credits would work to return racial segregation to the public schools."

The Chairman asked you, "What was your evidence. Did you have evidence of that?" You said, "Yes, indeed." That is not, "I believe," or "I think," or "I sort of feel. I dreamt last night."

What is your evidence?

Ms. SHIELDS. It is based on the previous statement that I said to you that in terms of what I—what we have seen happen when you look at what the composition of the private schools—

Senator MOYNIHAN. Who has seen? What is your evidence?

This is a very strong statement you have made.

Senator PACKWOOD. Worse than that, Senator Moynihan. It is an indictment.

Senatory MOYNIHAN. It is an indictment. It says that all those people we have had here the last 2 days are working at something evil.

Ms. SHIELDS. No; we do not mean to say that, though.

Senator MOYNIHAN. Well, that's what it says. Do you think racial segregation is good?

Ms. SHIELDS. No; we do not.

Senator MOYNIHAN. You think it is bad; don't you?

You think it is evil; don't you? I think it is evil.

You are saying this but you have no evidence. How could you come before this committee, this committee that has welcomed the representatives of labor for so long and so often, with a statement like this.

Where is your evidence?

Mr. CANTOR. Senator, if I may.

Senator MOYNIHAN. Please. Mr. Cantor. I think a few things should be established here. The bill does involve a tax program. That is my understanding of the bill.

Unfortunately, by my knowledge of the data, and yours, Senator, is even more exhaustive and intensive on this; there are a disproportionate number of poor people who are racial minority groups.

We are dealing with a bill that could provide as much as \$500, per student, to someone who attends a private school.

My knowledge of the tax structure, my knowledge of the distribution of income in the United States leads me only to a conclusion that \$500 would in many cases, and I have no documentation, sir, but simple logic tells me that that \$500 would be a threshold,

would be a trigger, to allow many middle and upper class non-minority groups to attend private schools, and by default, leave racial minorities in the public schools.

Senator PACKWOOD. Let me ask you. Did you hear Dr. Coleman, what he said?

Did you hear his testimony?

Mr. CANTOR. Yes; I did.

Senator PACKWOOD. Did you hear roughly what he said, and he was talking prospectively too, in terms of his statistical evidence. He concluded that the tuition tax credit would disproportionately draw into the private school system low-income ethnics.

Mr. CANTOR. I did not hear Dr. Coleman make that statement. If I did hear that, I think it is very suspect. I don't agree with it.

Senator PACKWOOD. Well, he was basing it upon evidence and upon studies. That is why Senator Moynihan and I are so curious as to what your evidence is.

Senator MOYNIHAN. The most distinguished mathematical sociologist in the Nation, having just completed the largest study of its kind ever of private schools, has 50 minutes ago testified on the basis of his research, just the opposite of what you say is your opinion.

Now, opinion is a perfectly good thing, and judgments are good.

Mr. CANTOR. I understood Dr. Coleman's testimony. Dr. Coleman was speaking as an educator. Dr. Coleman was speaking about the benefits of the private schools which we are not questioning.

My understanding here is we are talking about a tax credit. We are talking about someone that has distributional aspects, among income groups.

The subject here is not private schools versus public schools, in terms of what they can do for our children and the educational facilities they provide.

The question here is a Federal subsidy to a particular group of people, in a particular school system.

That is what we address ourselves to and that is what we are objecting to.

Senator PACKWOOD. I wish you would address yourselves to that, because what you are trying to do by innuendo is encourage the white flight theory and the segregationist academies that sprang up shortly after the school desegregation decisions, and that are no more relevant to private education today than slavery.

You are trying to perpetuate that myth in an effort to—in an effort to defeat this bill, on something that has no factual basis.

As a matter of fact, it is totally the antithesis of what the facts show and you don't care, because you will use any argument you can find to defeat this bill, and the facts be damned.

Mr. CANTOR. Well, sir, I stand by my statement and the statement of Ms. Shields.

Senator MOYNIHAN. Could I ask one other question, Mr. Chairman?

Obviously, you just—you don't fully realize how serious that statement was. This is not to say there is, you know, conclusive evidence of what the future will bring. But there is evidence of what has been happening, and is happening. We have had two very responsible people just tell us the opposite.



For you to—you have dragged slime into this hearing room. I just can't but tell you, I am sorry. The labor movement means too much to me.

Let me ask you. I take it, Ms. Shields, that you feel one of the reasons this would be a bad program is that it would add to the deficit; is that right?

Ms. SHIELDS. Certainly in the current situation we are in. We feel it is not——

Senator MOYNIHAN. You quote a colleague of ours as saying it would add "a sea of red ink" to the Federal deficit.

You feel that is a reason to be against it?

Ms. SHIELDS. I feel that is a very valid reason to be against it.

Senator MOYNIHAN. All right. That is a very valid reason to be opposed to this legislation.

Now, in this committee, I am fighting to preserve the program of trade adjustment assistance for members of the AFL-CIO. But I am being wiped out. I am told we can't do that because we have a deficit.

Are you telling me that the AFL-CIO is against continuing the Trade Adjustment Assistance Act? Should I drop my efforts because of the deficit?

Ms. Shields, you answer.

Ms. SHIELDS. I have a gentleman——

Senator MOYNIHAN. Advice of counsel?

Ms. SHIELDS. Yes.

Senator MOYNIHAN. I would consult counsel on that one.

Mr. KOPLAN. If I may, Senator, as you know, because we have worked together on that issue over the years, of course the AFL-CIO supports trade adjustment assistance.

Senator MOYNIHAN. But that doesn't add to the deficit?

Mr. KOPLAN. When we speak in terms of trade adjustment assistance, in this Congress, we are talking about this Congress virtually eliminating an existing program that has been on the books for years.

Of course, we supported retaining that program. We have testified on the House side. We have testified on the Senate side. We worked with you and this committee.

Senator MOYNIHAN. You don't have to tell me that you support it. I know you support it. But now we find that deficits are bad. If deficits are bad for this purpose, why aren't they bad for all purposes?

Mr. KOPLAN. We are not talking about the same thing, Senator. We are talking about eliminating——

Senator MOYNIHAN. You are going to hear this again, not from me, but wait until the Davis-Bacon bill comes up and it is said that this adds to the deficit, and the AFL-CIO is against adding a "sea of red ink."

You don't know what you have unleashed today. That is going to be a great debate. Tell Mr. Georgine when you get back that the AFL-CIO has formally informed the Finance Committee that a "sea of red ink" is threatening to engulf us and we have to cut back and hold down.

Mr. KOPLAN. Tuition tax credits aren't cutting back, Senator, they are adding something to the Internal Revenue Code that has never been there.

Senator MOYNIHAN. You are only for as much deficit as we have, not more; is that it?

Mr. KOPLAN. We could debate back and forth on this, Senator. It is not my purpose to be argumentative. I think you are well aware of our position on the issue that you raise, trade adjustment assistance.

Senator MOYNIHAN. I am well aware of it because I am the one who fights for it on this committee.

Mr. KOPLAN. And we recognize that.

Senator MOYNIHAN. I am now told we can't afford it, there is a deficit.

Then you walk into this room, and on something where there are good reasons to be for or against this bill, and suddenly you bring up the argument that is used against everything the labor movement proposes; we can't afford it.

It is going to be used against you. You haven't helped the labor movement one bit with this. I am surprised and disappointed.

That is a marginal thing. What is not marginal to me is to drag into this room the allegation that tuition tax credits will return racial segregation to the public schools.

Ms. SHIELDS. Senator, I regret that you take that meaning, because certainly it has been the intent of the labor movement to provide quality education for children of all races, colors, and economic advantage.

We do not in any way intend that statement to be taken in the manner in which you have taken it.

Senator MOYNIHAN. I am glad George Higgins isn't here.

Senator PACKWOOD. Senator Bradley.

Senator BRADLEY. No questions, Mr. Chairman.

Senator PACKWOOD. Senator Matsunaga.

Senator MATSUNAGA. Thank you, Mr. Chairman.

I think perhaps that Senator Moynihan, being the introducer of the bill with Senator Packwood, may fail to see the distinction that the counsel was trying to make.

That is that, in the case of the trade adjustment program, it is an existing program. Whereas the tuition tax credit would be a new program, adding to the national burden.

I think there is that distinction that I think needs to be seen.

But, I think your presentation I can agree with. The criticism warrants if you had some survey done, just by way of asking prospective students, as you see, who may leave the public school system to get into the private system—just as the other studies say that by questioning the pupils or parents as to what would happen if the bill were enacted. I mean the studies could be made. If you had made the studies, I think that your testimony could definitely have been supported by what committee members would consider as factual basis.

Mr. McGuire, you make a statement on page 3, that under the proposed legislation, tax credits could amount to \$500 per child. But that the Federal Government had spent less than \$200 on the current average pupil expenditures in public schools.

Are you in any way saying here that if there is to be any tax credit at all, such credit should be limited to \$200 per pupil.

Mr. McGUIRE. No; we were not stating it in that particular sense. We were making the economic comparison with the overall Federal aid as it exists now for elementary and secondary, and comparing it with this prospective legislation.

We were speaking to the inequity between the Federal contribution, on this one hand, to the parents, but to the schools in that manner, as compared in the other way. We were noting the fact that from previous legislation, now on the books, there is a contribution to the private schools, through the Elementary and Secondary Education Act.

Of course earlier testimony spoke to figures that I was not aware of on that, and figures that were not given specifically. But alleging that they were not as equal, even in the Elementary and Secondary Education Act—I'd be interested in seeing those.

Senator MATSUNAGA. Well, you speak of the argument of double taxation as a red herring, but that is the most frequent argument which I have heard from parents who do send their children to private schools, including the Catholic schools and other religious schools.

And of course, what I am searching for here is some equity, and I thought perhaps if we were to limit it to \$200 credit. But then the question arises, supposing a family has three children. Then would you allow \$600 credit. Or limit it to \$500?

Mr. McGUIRE. Well, in terms of the double taxation one that has been one of the primary ones over the years, that this has been discussed. We have the situation that a public school system does exist where all children can attend. Just as there are public highways on which everyone can drive, and a public police force that protects our property and so forth.

Nevertheless, there are those who choose to buy private services of one kind or another, be it police protection or be it a swimming pool as opposed to the public swimming pool and so on.

And so that was the reason I was making that it is a choice to pay for it. And we fully support the private and parochial schools. And are pleased that they are there. But believe they should be there for those who choose to pay for them, rather than having all of the citizens pay for both the public schools and the private schools.

Senator MATSUNAGA. Thank you very much.

Senator PACKWOOD. Following up on Senator Matsunaga's—

Mr. KOPLAN. Excuse me, if I could just make a comment, Senator Matsunaga.

The question has been raised how do we test this unless there is a law passed.

I think Senator Packwood raised that.

I would just mention that the the Joint Committee on Taxation print prepared in advance of this hearing cites that at least the Federal court in the State of Ohio has considered a similar question with regard to State refundable tuition tax credits. And struck it down.

And the Supreme Court in *Nyquist*—although the *Nyquist* case did not involve a refundable tuition tax credit, it dealt with a deduction. And I am quoting from the committee print.

Based on the actual cost of tuition, the court's opinion suggests that these types of benefits also might be unconstitutional.

I mention that, because in the policy statement, of S. 550, there is, and I am just excerpting—There is a statement that the Congress finds that all of the provisions of the Constitution are complied with as far as the bill is concerned.

And I mention the joint committee's discussion of this because I don't think it is as clear cut an issue as the preamble to the bill would indicate.

Senator MATSUNAGA. Thank you, sir.

Senator PACKWOOD. Mr. McGuire, in your statement you indicate that this could be up to \$500 per child, for private school students, which is substantially greater than the slightly less than \$200 per public school students.

But in fact, if this were cut down so that it was not even as much as the Federal Government gives to public school students, you would still oppose tuition tax credits.

Mr. McGUIRE. Yes. The initial statement and closing statement both spoke to unalterably being opposed—

Senator PACKWOOD. Yes, in way, shape, or form.

Mr. McGUIRE [continuing]. For comparison reasons internal to the document. And of course, as you know, we are concerned with their being more Federal aid for elementary and secondary students than in past testimony. And I assure you in future testimony we will be working in that regard, as well.

Senator PACKWOOD. Well, the reasons may change from time to time because we may have budget surpluses and we may spend more for public education than private.

But the NEA is unalterably opposed no matter what the circumstances.

Mr. McGUIRE. To tuition tax credits. That is correct.

Senator MOYNIHAN. Could I just say to Mr. McGuire that I found your testimony forceful and potent, as with Mr. Isenberg, who had different views.

You're not really frightened of deficits, are you? If they help education?

You could live with it?

May I say, I mean if we got this tuition tax credit down to \$1, you would be against it, wouldn't you?

Mr. McGUIRE. That is correct.

Senator MOYNIHAN. Because you think this is bad public policy.

Mr. McGUIRE. That is correct.

Senator MOYNIHAN. That is why we asked you to this hearing. That is how the head of the largest teachers' association feels. Fine.

And you didn't say it's bad public policy because it will cause drought in the upper Middle West, or something like that. Or floods in the Mississippi Valley.

Fine. That is perfectly straight business. And we know there are people who on principle feel this is bad public policy.

And of course we can't all agree. But we can disagree on levels of mutual respect and civility. I thank you and I thank Mr. Isenberg.

Thank you, Mr. Koplan, thank you Ms, Shields.

Senator **PACKWOOD**. I want to read, Pat, just one statement. This is from Dr. Vitullo-Martin's testimony:

Between 1970 and 1980, Catholic elementary schools increased their minority enrollment from 11 percent to almost 20 percent, and secondary schools from 8 percent to 15 percent. Catholics enrolled a higher proportion of Hispanics than public schools and the Lutheran secondary schools enroll a higher proportion of blacks than the public schools.

In the West, Catholic schools often enroll higher percentages of minorities than the public systems. In California, for example, the minorities make up 44 percent of Catholic school enrollment, but only 38 percent of public enrollments.

And I would ask, Ms. Shields, that you get me that evidence that indicates the support for that statement on page 5 of your testimony.

Senator **MOYNIHAN**. May I add, Mr. Chairman, that if it isn't forthcoming, I am going to ask that there be a blank page in our report where we are still awaiting the evidence that the AFL-CIO says it has.

[These letters were subsequently received from AFL-CIO:]



American Federation of Labor and  
Congress of Industrial Organizations

815 Sixteenth Street, N.W.  
Washington, D.C. 20006  
(202) 637-5000

August 4, 1981

Senator Bob Packwood  
Chairman, U.S. Senate Subcommittee on  
Taxation and Debt Management  
United States Senate  
Washington, D.C. 20510

Dear Senator Packwood:

This letter is in response to your request for additional data regarding the factual basis for the AFL-CIO's statement that,

"Tuition Tax Credits would work to return racial segregation to the public schools, thus reversing gains made in school intergration."

As promised, we submit the following additional materials in support of our position. In addition, we are also responding to the position taken during the hearings that the study by Professor Coleman of "Public and Private Schools" supports the contrary view. We request that this additional material be inserted after Line 21 on Page 135 of the transcript where Senator Moynihan asked us to submit additional data. Also, corrections have been made where necessary on the enclosed copy of the transcript.

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As Arnold Cantor, Assistant Director of the AFL-CIO Department of Economic Research stated on June 4, 1981, a \$500 tax credit

"would be a threshold, would be a trigger, to allow many middle and upper class non-minority groups to attend private schools, and by default, leave racial minorities in the public schools."

Additional support for our contention results from the estimates of the Congressional Budget Offices' February report and others that show most of the tax advantage going to families with incomes over \$25,000, combined with the most recent U.S. Census data, shows for example:

\* Only 17% of black families (1979) have annual incomes of \$25,000 or over compared to 36.7% of white families and most shocking

\* The poverty rate among black families with children under the age of 18 was 40.7% compared to 11.3% for white families with children under the age of 18.

See page 13 and 19, Current Population Reports, Consumer Income, Series P-60, No. 125, Money Income and Poverty Status of Families and Persons in the United States: 1979 (Advance Report), U.S. Department of Commerce, Bureau of Census.

Further, the May 29, 1981 study by the Congressional Budget Office referred to by Senator Moynihan at the June 4, 1981 hearing, [Attachment #1] states that approximately

"60 percent of the benefits [of tuition tax credits] would go to students from families with incomes above the median family income [as of 1982]."

The report also concluded that by 1986 fully 72 percent of the benefit will go to families with incomes over \$25,000 [see Page 3 of May 29, 1981 CBO study]. Since this CBO report was commissioned by Senator Moynihan, it was both unknown to us and unavailable to us at the time we testified. However, its release was authorized by Senator Moynihan at our request after the hearing

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and is included herein so that the record may be complete.

It was asserted during the hearing on June 4, 1981, that Professor Coleman's study "Public and Private Schools," supported the opposite viewpoint regarding the impact on the minority composition of private and public school populations. That view is disputed. A paper prepared by Professor Arthur S. Goldberger, Vilas Research Professor of Economics, for the Center for Advanced Study in the Behavior Sciences, Stanford, California, raises serious questions about the conclusions of the Coleman report and the statistical basis for those conclusions. [Attachment #2 - "Coleman Goes Private (In Public), May, 1981].

Professor Goldberger states in the introduction of his study of the Coleman report:

"Actually, the quality of documentation, analysis and interpretation is so defective that it is hard to avoid the overall conclusion that the report reeks with incompetence and irresponsibility." (Page 1)

Further, his study concludes:

"Vouchers and Tax Credits"

"Because of the political implications, it is worthwhile to dispose of one item at the start. According to the press stories, the Coleman report provides evidence in support of tuition tax credits and/or educational vouchers to facilitate the movement of minority and low-income students from public to private schools. But there is nothing in the report to justify that position." (Page 1)

Professor Coleman in his report concluded that tuition tax credits would increase the number of blacks and Hispanics in the private schools (Pages 230-231), however, upon examining the statistical basis for that conclusion, Professor Goldberger concludes that:



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"Nothing in the data bears directly on tax credits and vouchers. Rather, one finds only a cavalier extrapolation from a calculated effect of a universal \$1,000 increase in income. And what might the effect of that income increase -- than which the effect of tax credits and/or vouchers is even greater -- be? The answer, to be found on Pages 72 and 74 of the report, is that across the United States,

1,385 Blacks

1,555 Hispanics

3,657 students from the lower third of the income distribution, would shift from public to private schools. Those projected flows amount respectively to approximately two-tenths, four-tenths and three-tenths of one percent of the present public school enrollments of the three groups."

"When re-read with those trivial magnitudes in mind, the long passage of the report quoted above is simply an insult to the reader's intelligence." (Page 3)

Regarding Coleman's use of mathematical statistics and research techniques throughout his report, Professor Goldberger notes:

"Neither standard errors nor t-statistics are given: we have no way to assess the reliability of the regression coefficients. Again, since the natural (pooled) regressions are not reported -- there is no indication that they were even run -- we have no way to assess the meaningfulness of the sectoral separation. It is apparent by now that the Coleman study does not meet minimum standards of admissibility for scientific reporting. (Page 2)

"In view of the unreliability of the income report, the nonresponse rate, the arbitrariness of the smoothing function, the neglect of sampling error, the opportunity for arithmetic round-off error -- and the trivial magnitude of the predicted flows -- would any serious scholar baldly assert that \$1,000 increase in income 'would increase the proportion of blacks and Hispanics in the private sector'? Would any scholar -- serious or otherwise -- then go on to take this as evidence in support of tuition tax credits and vouchers?

#### Conclusion

"Upon examination and reflection, Coleman's "Public and Private Schools" cannot be viewed as a competent scientific report, nor as a responsible effort at policy analysis." (Page 14)



CONGRESSIONAL BUDGET OFFICE  
U.S. CONGRESS  
WASHINGTON, D.C. 20515

*ATTACHMENT #1*

MAY 29 1981

The Honorable Daniel Patrick Moynihan  
United States Senate  
Washington, D.C.

Dear Senator:

The attached analysis of S. 550, the "Tuition Tax Relief Act of 1981," is provided in response to your letter of April 10. Initially, S. 550 would reduce federal revenues only slightly (\$0.1 billion in fiscal year 1982); but this amount would increase significantly during subsequent years, reaching nearly \$6.9 billion in 1986. Most of the benefits from this tuition tax credit (60 to 66 percent) would go to families claiming credits for postsecondary education, and approximately 60 percent of the benefits would go to students from families with incomes above the median family income.

I hope this information is helpful to your deliberations. Please let us know if we can be of further assistance.

With best wishes,

Sincerely,

*ALICE M. RIVLIN*

Alice M. Rivlin  
Director

Attachment

AN ANALYSIS OF THE REVENUE IMPACT AND DISTRIBUTION OF BENEFITS FOR  
S. 550, "THE TUITION TAX RELIEF ACT OF 1981"

On February 24, 1981, Senators Packwood, Moynihan, and others introduced S. 550, the "Tuition Tax Relief Act of 1981," which would provide a refundable tuition tax credit for up to 50 percent of tuition paid by a family in any year up to the following maximum credit amounts:

- o From August 1982 to August 1983: \$250 for full-time undergraduate collegiate and postsecondary vocational education tuition and fees, and for elementary-secondary tuition and fees at nonpublic schools.
- o From August 1983 to August 1984: \$500 for the same population of students served in the previous year.
- o From August 1984: \$500 for the same population previously served, plus graduate students and postsecondary students enrolled greater than half-time.

In the first year (fiscal year 1982), the CBO estimates that federal revenues would be reduced only slightly, less than \$0.1 billion (see Table 1). Although credits claimed for tuition expenses incurred in calendar year 1982 would amount to more than \$2.1 billion, most of the revenue loss associated with these credits would not occur until fiscal year 1983. As the maximum credit was increased and eligibility was expanded, the revenue loss would increase. In 1986, this tax credit would reduce revenues by nearly \$6.9 billion.

The largest proportion of benefits would be claimed for postsecondary tuitions, both because there are more tuition paying students in postsecondary education than in elementary and secondary education, and because postsecondary tuitions are larger, on average, than elementary and secondary tuitions. Initially about 60 percent of the benefits would be

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TABLE 1. ESTIMATED REVENUE LOSS FROM S. 550, THE TUITION TAX RELIEF ACT OF 1981 (In millions of dollars, fiscal years)

	1982	1983	1984	1985	1986
Reduction in Tax Liability	99	2,524	4,742	5,799	6,236
Elementary and secondary costs	40	1,028	1,903	2,067	2,121
Postsecondary costs	59	1,496	2,839	3,732	4,115
Refunded Credit in Excess of Tax Liability	0	167	418	509	621
Elementary and secondary costs	0	54	127	131	155
Postsecondary costs	0	113	291	378	466
Total Revenue Loss	99	2,691	5,160	6,308	6,857
Elementary and secondary costs	40	1,082	2,030	2,198	2,276
Postsecondary costs	59	1,609	3,130	4,110	4,581

claimed for full-time undergraduate postsecondary expenses, with the remaining 40 percent claimed for elementary and secondary tuitions. In subsequent years, as the maximum credit limit was increased and postsecondary eligibility was extended to graduate and some part-time students, a slightly larger share of the credits would be claimed for postsecondary expenses. By 1985, approximately two-thirds of the amounts claimed would be for postsecondary tuition.

These credits would be available to all families incurring tuition costs—including higher-income families, which are more likely to have children in tuition charging schools. As a result, more than 60 percent of the benefits would accrue to families with incomes above the median family income, which we estimate will be approximately \$25,000 in 1982 (see

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Table 2). In later years roughly the same proportion of benefits would go to families with incomes above the median, although the nominal dollar income distribution would shift upward as family incomes increase. The income distribution of benefits accruing from this tuition tax credit would not differ appreciably for benefits claimed for either elementary and secondary or postsecondary tuitions.

TABLE 2. PERCENT OF TUITION TAX CREDIT BENEFITS FOR DIFFERENT INCOME FAMILIES BY CALENDAR YEAR<sup>a</sup>

Family Income (in nominal dollars)	1982	1983	1984	1985	1986
\$ 0 - 15,000	22	20	19	18	17
Elementary and secondary costs	24	22	21	19	18
Postsecondary costs	19	19	17	17	16
\$15,000 - 25,000	18	16	13	12	10
Elementary and secondary costs	19	16	13	12	10
Postsecondary costs	18	16	13	12	10
\$25,000 - 40,000	31	28	26	24	22
Elementary and secondary costs	29	28	27	24	22
Postsecondary costs	31	28	26	25	22
\$40,000+	30	36	42	46	51
Elementary and secondary costs	28	33	39	45	50
Postsecondary costs	32	37	44	47	52

NOTE: Columns may not sum to 100 percent due to rounding.

a. Calendar year benefits are reflected most directly in the costs for the following fiscal year.

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Discussion and Caveats

The estimates provided in this analysis are derived from CBO's Student Assistance Cost Estimating Model (SACEM), which simulates families' eligibility for tuition tax credits based on educational expenses and various family financial and demographic characteristics. The estimated costs and effects of a tuition tax credit proposal are affected by the assumptions built into the model. Some critical assumptions are discussed below:

- o As outlined in the bill, eligible expenses (tuition and fees) would be reduced by the proportion of student aid applied toward tuition and fees. The estimates in this analysis assume that the amount of student aid attributable to tuition is proportional to the total amount of aid available to meet all educational costs. Because only a portion of students' other aid is subtracted from their tuition, many lower- and moderate-income families would remain eligible for tax credits, even though they may be receiving substantial amounts of direct student assistance.

The manner in which tuition is offset by other forms of student assistance greatly affects who would benefit from a tax credit and how much revenues would be reduced, particularly for post-secondary credits. For example, if eligible expenses (tuition and fees) were reduced by all other student aid, rather than by only a portion of other aid, revenue losses would be reduced by \$1.9 billion in 1983 (a 31 percent reduction), and the remaining benefits would be skewed much more heavily to higher-income families--approximately 70 percent would go to families with incomes above \$25,000, compared to 60 percent when only a portion of other aid is counted against tuitions.

- o These estimates also assume that other sources of aid will increase in the future. Most importantly, the Pell Grant program is assumed to be fully funded at the amounts authorized in the Higher Education Act of 1980. If student assistance funding is reduced, however, as currently proposed by the Administration and being considered by the Congress, tuition tax credit eligibility would increase, which would result in greater revenue losses than those projected in this analysis.

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- o The estimates do not incorporate the provision of S. 550 that would reduce eligible expenses by the amount of interest subsidy received in Guaranteed Student Loans. We would not expect the loss in benefits resulting from this to be large because the loan subsidy would marginally affect eligibility for only a portion of the families.
- o Projections of the growth in tuitions affect program costs. Data from the 1978 October series of the Current Population Survey (CPS) provide the base for projecting elementary and secondary tuition and fees. National Center for Education Statistics data were used as the base for postsecondary costs. As a proxy for the expected growth in tuitions and fees, the CBO uses a price index based on the work of Dr. Kent Halstead of the National Institute of Education, which differentially weights four major resources required to provide educational services (salaries, retirement benefits, maintenance, and fuel and utilities). Using this index assumes both that private school costs will increase at the same rate as public school costs, and that private school tuitions will increase at the same rate as operating costs.

An analysis of what scanty data are available on private elementary and secondary school tuitions does not show any consistent or appreciable difference in recent years between tuition growth in the private sector and public per pupil expenditures (see Table 3). Furthermore, revenue losses do not appear to be very sensitive to small changes in the growth rate of elementary and secondary tuitions--a 1 percentage point change would lead to approximately 0.6 percent change in revenue losses claimed for elementary and secondary tuitions.<sup>1</sup>

- o The estimates assume that all eligible students would claim the tax credit. The estimates do not incorporate any anticipated changes resulting directly from tuition tax credits, such as changes in the demand for private education or changes in tuition charges. The revenue loss associated with the credit would increase if either tuition tax credits were to increase private school enrollments, or if tuition tax credits were to result in more rapid growth in tuitions. On the other hand, the revenue loss would decline if

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1. Because our projected rate of growth averages approximately 10 percent over the next few years, a 1 percentage point change would increase the rate of change by approximately 10 percent.

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some families did not claim the credit or if some families were unable to claim the credit because their children attended schools that did not meet the requirements of eligible educational institutions stipulated in the bill.<sup>2</sup>

TABLE 3. PERCENT CHANGE IN AVERAGE PUBLIC PER PUPIL EXPENDITURE AND PRIVATE SCHOOL TUITIONS, 1975 THROUGH 1979

Year	Public Per Pupil Expenditures	Catholic Schools		Independent Schools Range of Tuitions		
		Elementary Tuition	Secondary Tuition	Lowest Growth Sector	Highest Growth Sector	Average Growth All Sectors
1975-76	10.5	NA	NA	NA	NA	NA
1976-77	8.4	NA	9.6	6.0	10.1	7.9
1977-78	11.3	6.9	8.6	6.9	14.6	8.9
1978-79	11.7	16.0	10.2	7.2	11.8	8.9
1979-80	NA	NA	NA	8.3	16.9	12.2
Annual Average 1975 through 1979 Based on Years Available	10.5	11.5	9.5	7.1	13.4	9.5

SOURCES: Public per pupil expenditures from the National Center for Education Statistics' Projections of Education Statistics to 1988-89, Table 39.

Catholic school tuition costs from various publications of the National Catholic Educational Association Data Bank,

Independent school tuition costs from data provided by the National Association of Independent Schools.

2. S. 550 defines eligible elementary and secondary schools as privately operated, not-for-profit, day or residential schools, which are exempt from taxation and which do not exclude persons from admission or from participation in school activities on account of race, color, or national or ethnic origin.



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**Coleman Goes Private (In Public)**

by

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## I. INTRODUCTION

The latest Coleman Report, on "Public and Private Schools", received considerable press attention upon its release in early April 1981. Based on the "High School and Beyond" sample of 59000 students in 1000 high schools, conducted by NORC for the federal government's National Center for Education Statistics, the study was intended to provide empirical material relevant to an assessment of the merits of public and private schools in the United States. The report concludes that:

It is hard, however, to avoid the overall conclusion that the factual premises underlying policies that would facilitate use of private schools are much better supported on the whole than those underlying policies that would constrain their use. (p. 233)

Actually, the quality of documentation, analysis, and interpretation is so defective that it is hard to avoid the overall conclusion that the report reeks with incompetence and irresponsibility.

## II. VOUCHERS AND TAX CREDITS

Because of the political implications, it is worthwhile to dispose of one item at the start. According to the press stories, the Coleman Report provides evidence in support of tuition tax credits and/or educational vouchers to facilitate the movement of minority and low-income students from public to private schools. But there is nothing in the report to justify that position. The relevant passage is:

An examination of the predicted effect of a \$1,000 increase in income for all income groups shows that this would increase the proportion of blacks and Hispanics in the private sector, as well as the proportion of students from lower income families.

Because a tuition tax credit or a school voucher would even more greatly facilitate private school enrollment for students from lower income families relative to students from higher income families, we can expect that either of those policies would even more greatly increase the proportion of blacks or students from low-income backgrounds in the private sector (primarily in the Catholic sector). If either of these policies failed to increase the proportion of blacks or students from low-income families in private schools relative to that in the public schools, then, overall, either of these policies would provide greater financial benefit to whites than to blacks, or to higher income than to lower income families, because of the tuition reductions for parents of those students currently enrolled in the private sector. If one considers only new entrants into the private sector, the evidence from the hypothetical experiment, together with the fact that a tuition tax credit or voucher plan would likely be more progressive in its effect than a \$1,000 increase in income, indicates that blacks, Hispanics, and low-income families would differentially benefit. To consider the educational rather than the financial benefits means to consider only the new entrants into the private sector, for it is only their education that would be changed; thus blacks and Hispanics would differentially benefit educationally.

The evidence indicates that facilitating use of private schools through policies of the sort described above would not increase segregation along racial or economic lines but would

decrease it (though the evidence indicates that religious segregation would increase). Such policies would bring more blacks, Hispanics, and students from lower income backgrounds into the private schools, thus reducing the between-sector segregation, and these students would be moving from a sector of high racial segregation to a sector of low racial segregation, as well as from a sector slightly higher in economic segregation to one slightly lower. (pp. 230-231)

Evidently, nothing in the data bears directly on tax credits and vouchers. Rather one finds only a cavalier extrapolation from a calculated effect of a universal \$1000 increase in income.<sup>2</sup> And what might the effect of that income increase--than which the effect of tax credits and/or vouchers is even greater--be? The answer, to be found on pages 72 and 74 of the report, is that across the entire United States,

1,385 Blacks

1,555 Hispanics

3,657 students from the lower third of the income distribution, would shift from public to private schools. Those projected flows amount respectively to approximately two-tenths, four-tenths, and three-tenths, of one percent of the present public school enrollments of the three groups.<sup>3</sup>

When re-read with those trivial magnitudes in mind, the long passage of the report quoted above is simply an insult to the reader's intelligence. The insult is repeated:

[T]he racial segregation between the public and the private schools as a whole would be reduced by such a change, because the proportion of minorities among those coming in to the private

schools would be somewhat greater than the proportion already in these schools (pp. 71-73)... [T]he data indicate that...both parts of the private sector would come to have higher proportions of minorities than they do now . (p. 73)

[A] policy change of this sort would function to decrease the between-sector economic segregation... [I]t is clear that in both private school sectors the income distribution would move in the direction of the overall U.S. distribution (p.75)

The insult is sharpened when one examines the method by which the estimated flows were obtained, as will be done in Section 5.

### 3. COGNITIVE OUTCOMES

The "High School and Beyond" project, in the Spring of 1980, sampled 58,728 students (30,263 sophomores, 28,465 seniors; p. A-8) in 1005 high schools (894 public, 84 Catholic, 27 other-private; p. 203). The students filled out a one-hour questionnaire and took a one-and-a-half-hour battery of tests. Principals and teachers provided additional information about the school.

Coleman's analysis of the cognitive tests is summarized as follows:

The evidence from Chapter 6 is that private schools do produce better cognitive outcomes than public schools. When family background factors that predict achievement are controlled students in both Catholic and other private schools are shown to achieve at a higher level than students in public schools.

...This evidence is subject to a caveat: despite extensive statistical controls on parental background, there may very well be other unmeasured factors in the self-selection into the private sector that are associated with higher achievement. (p. 224)

One turns to Chapter 6 (pages 148-223) to learn first about the content of the cognitive tests. The six tests given to sophomores are identified only by subject name and number of items: reading (19), vocabulary (21), mathematics (38), science (20), civics (10), writing (17). The six tests given to seniors are also identified only by subject name and number of items: reading (20), vocabulary (27), mathematics (32), picture number (15), mosaic (89), visual (16). Thus the reader has no basis for judging the salience or validity of the test battery as a measure of cognitive outcomes.

Indeed the only hint of a substantive description of the tests must give even a sympathetic reader pause:

The mathematics items are all rather elementary, involving basic arithmetic operations, fractions, and only a few hints of algebra and geometry (p. 159).

If so, the test battery concentrated on items which are taught in elementary school, and it is irresponsible to credit the high schools for performance on these tests.

In any event, pp. 152 and 153 give the sample means and standard deviations on the tests, by school sector. Broadly speaking, the public-school student means run about .4 standard deviations below the means for the Catholic-school, and the private-school, students.

Coleman's attention quickly shifts (p. 157) to three subtests, consisting of those items which are common to the sophomore and senior batteries. These are identified only as reading (8 items), vocabulary (8 items), mathematics (18 items). Page 154 gives the sample means on the three subtests, for sophomores and seniors, for public, Catholic, and other-private schools. Broadly speaking, the average public-school student answers one less item correctly per test than does the average private-school student. No standard deviations are given for these short-form tests, so I am unable to display the gaps in standard units.

As far as I can make out (the report is not always explicit) the rest of Chapter 6 (including the regression analyses) is concerned with these short-form tests. It is appalling that the major dependent variables in the assessment of cognitive outcomes are short tests of dubious content and unknown variation.<sup>4</sup>

As controls for family background, a set of measures taken from the student questionnaire is used, including family income, parents' education, family composition, number of rooms in home, cultural items in home, parental expectations, and a pair of dummies for the Black/Hispanic/white trichotomy. Since the objective is <sup>to</sup> adjust the observed school sector mean differences in test scores, the natural procedure would be to run 6 regressions (3 tests x 2 grades) on the family background variables including a pair of dummies for the school-sector trichotomy. Coefficients on those dummies would directly give estimates of the adjusted means.

This approach is apparently too simple-minded for Coleman who wants "to allow for different effects of background characteristics in different sectors" (p. 170). Thus he goes directly to run separate sector regressions,

one for public schools and one for private schools; the latter includes a dummy for the Catholic/other-private dichotomy. Thus 12 ( $=3 \times 2 \times 2$ ) vectors of regression coefficients are reported along with the  $R^2$ s (pp. A12-A13) and the means of the explanatory variables (p. A14).

Neither standard errors nor t-statistics are given: we have no way to assess the reliability of the regression coefficients. Again, since the natural (pooled) regressions are not reported--there is no indication that they were even run--we have no way to assess the meaningfulness of the sectoral separation. It is apparent by now that the Coleman study does not meet minimum standards of admissibility for scientific reporting.

This failure is compounded when, as is done throughout the text of Chapter 6, regression coefficients and their differences are literally interpreted as if they were perfectly reliable.

Having run separate regressions by school sector, Coleman is left with the problem of calculating an adjusted-mean-difference. This is accomplished by evaluating the fitted private-school regressions at the public-school means, and subtracting from the observed public school mean to get an "estimated increment".<sup>5</sup> As reported on p. 171, these, roughly speaking, run less than one-half of the unadjusted-mean-differences.<sup>6</sup> Of course, no standard errors are reported for these increments, but that doesn't inhibit the interpretation:

The increments for each type of private school are positive, indicating that students of the same background characteristics have generally higher achievement in both of these types of private schools than in the public schools... The differences



are reduced compared to the raw differences...because of the statistical control of family background (p. 173).

The caveat that measured background variables may not adequately control for pre-existing differences between students in the several sectors is repeated several times in the report. No mention is made of the approaches to statistical removal of such selectivity bias which are now routine in the econometric literature. On the other hand, a crude calculation is undertaken (pp. 175, 180-185) to handle the self-selection bias in sophomore-senior comparisons associated with dropping out of school. Since the dropout rate is (said to be) higher in public schools, and dropouts (are said to) come from the lower portion of the test-score distribution, the effect of the calculation turns out to be favorable to the private schools.<sup>7</sup>

Another confounding element in sectoral comparisons of cognitive test scores is that in the public schools, students may be taking either academic, general, or vocational curricula. While the report is silent on this distinction, my understanding is that (1) the curriculum being taken is available in the sample data, and (2) in the sample, academic-track public school students do not have lower mean test scores than Catholic and other-private school students.<sup>8</sup>

#### 4. THE "COMMON SCHOOL"

Catholic schools more nearly approximate the "common school" ideal of American education than do public schools, in that the achievement levels of students from different parental educational backgrounds, of black and white students, and of

Hispanic and Non-Hispanic white students are more nearly alike in Catholic schools than in public schools. (p. 232)

Actually, the Coleman Report does not give mean test scores for parental-education and ethnic-groups by school sector attended. (Indeed, it does not even give marginal mean test scores for those groups). Rather, the passage quoted derives from a comparison of adjusted means, that is the regression coefficients on variables representing group membership when separate regressions are run for each of the sectors.

Coleman now (pp. 165-175) has 3 sectors (public, Catholic, other-private), 2 grade levels (sophomore, senior), and 3 tests (reading, vocabulary, and mathematics). Thus, 18 fresh regressions are run. The list of explanatory variables is shortened drastically to: family income, father's education, mother's education, Black-White dummy, and Hispanic-Anglo dummy.<sup>9</sup>

The regression output, said (p. 176) to be tabulated in the Appendix, is not to be found there (at least not in the copy available to me). But an extract of the regression results is tabulated on p. 178. We find the coefficients on the parental education variables for all three sectoral regressions.<sup>10</sup> We find the coefficients on the Black and on the Hispanic variables for the public and Catholic sectors.<sup>11</sup> We do not find the coefficients on the income variable. Nor the  $R^2$ s. Nor any standard errors.

A typical comparison in the table is for reading at the sophomore level: the coefficient on Black is -1.2 in public schools but only -0.6 in Catholic schools. Thus

The achievement of blacks is closer to that of whites...in Catholic schools than in public schools (p. 178).

Similarly for the other tests, for Hispanics, and for parental education.

And thus

Altogether, the evidence is strong that the Catholic schools function much closer to the American ideal of the "common school", educating children from different backgrounds alike, than do the public schools. (p. 221)

Surely common decency as well as responsible scientific practice demands that point estimates be mediated by standard errors before the reader is burdened with such colorful interpretations?

##### 5. THE ENROLLMENT-INCOME RELATIONSHIP

An examination of the predicted effect of a \$1,000 increase in income for all income groups shows that this would increase the proportion of blacks and Hispanics in the private sector, as well as the proportion of students from lower income families. (p. 230)

At middle and higher income levels, the increase in probability of enrollment of blacks with increase in income is higher than that of whites. At virtually all income levels, both the probability of enrollment of Hispanics and the increase in that probability with income are higher than for non-Hispanic whites. (p. 232)

The proximate source for that summary of the enrollment-income relationship is Table 3.5.1 on p. 70 of the report. The table gives the sample cross-tabulation of proportions attending Catholic and other-private schools by three ethnic groups (Anglo, Black, Hispanic) and seven income brackets. The table also gives the number of public school students in each of the 21 (= 3 x 7) categories.

Bearing in mind the substantial use that Coleman makes of this table, our attention is directed to the following points:

- (i) The income variable is missing for about 15% of the sample (my rough calculation from the table).
- (ii) No standard errors are reported for the proportions.<sup>12</sup>
- (iii) Nevertheless, as the second quotation above indicates, first and second differences of the estimated proportions are interpreted seriously.<sup>13,14</sup>
- (iv) The family income variable is the student's response to this item (p. B-12):

Mark the oval for the group which comes closest to the amount of money your family makes in a year:

\$ 6,999 or less	0
\$ 7,000 to \$11,999	0
\$12,000 to \$15,999	0
\$16,000 to \$19,999	0
\$20,000 to \$24,999	0
\$25,000 to \$37,999	0
\$38,000 or more	0

How can responses to such a question by high school sophomores (or seniors), toward the end of an hour-long questionnaire, apparently without an opportunity to consult their parents, be taken seriously?<sup>15</sup> And yet Coleman's energetic support for tuition-tax credits and/or vouchers is said to rest on this evidence.

We proceed to Coleman's method for predicting the effects of a universal \$1000 increase in income. It will suffice to confine our attention to the Black shift to Catholic schools, and to introduce the following notation. Index the income brackets by  $i$  ( $=1, \dots, 7$ ), and let

- $x_i$  = midpoint of income bracket  $i$ , in \$1000,
- $p_i$  = proportion of the black students in income bracket  $i$  who are enrolled in Catholic schools,
- $n_i$  = number of black students in income bracket  $i$  who are enrolled in public schools.

The tabulation below gives the value of those three variables extracted from Coleman's Table 3.5.1. (The final column, labelled  $d_i$ , will be explained later.)

Data for Calculating Black Shift from Public to Catholic Schools

$i$	$x_i$	$p_i$	$n_i$	$d_i$
1	3.5	.008	141383	.00183
2	9.5	.019	153302	.00113
3	14.0	.021	120723	.00110
4	18.0	.028	98830	.00254
5	22.5	.043	84661	.00261
6	31.5	.060	49449	.00206
7	45.0	.090	32730	.00222

A natural, if crude, way to proceed at this stage would have been to linearly regress  $p_i$  on  $x_i$  over the seven data points, take the slope as an estimate of the incremental proportion of Blacks who would be enrolled in Catholic schools if their family incomes increased by \$1000, and multiply the slope by the total number of Black high school students, to get an absolute flow.<sup>16</sup>

But Coleman's calculation is more elaborate (pp. 69-72). Let

$$\Delta p_i = p_{i+1} - p_i, \Delta x_i = x_{i+1} - x_i; (i = 1, \dots, 7)$$

then let

$$d_1 = \Delta p_1 / \Delta x_1$$

$$d_i = \frac{1}{2} (\Delta p_i / \Delta x_i + \Delta p_{i-1} / \Delta x_{i-1}) \quad (i = 2, \dots, 6)$$

$$d_7 = \Delta p_6 / \Delta x_6.$$

These smoothed slopes  $d_i$ , which I have tabulated above, are interpreted as the incremental proportion of Blacks in initial income bracket  $i$  who would enroll in Catholic schools when their family incomes increase by \$1000. Finally, the predicted total number of Blacks who would do so is calculated as

$$\sum_{i=1}^7 d_i n_i = m, \text{ say.}$$

It is this  $m = 1,213$  for Catholic schools along with the similarly calculated figure for other-private schools (172) that make up the predicted incremental number of Blacks enrolling in the private sector, namely 1,385, which I cited in Section 2.

A few additional remarks are now in order:

(v) The "zero-order" relationship between enrollment and income is being used; no other family background variables are controlled for.

(vi) The formula for  $m$  is strange, since the  $n_i$  refer to public-sector enrollment, while the  $d_i$  are increments in proportions which had all-sector enrollment as their base.<sup>17</sup>

In view of the unreliability of the income report, the nonresponse rate, the arbitrariness of the smoothing function, the neglect of sampling error, the opportunity for arithmetic round-off error--and the trivial magnitude of the predicted flows--would any serious scholar baldly assert that the \$1000 increase in income "would increase the proportion of blacks and Hispanics in the private sector"? Would any scholar--serious or otherwise--then go on to take this as evidence in support of tuition tax credits and vouchers?

## 6. CONCLUSION

Upon examination and reflection, Coleman's "Public and Private Schools" cannot be viewed as a competent scientific report, nor as a responsible effort at policy analysis.

## Footnotes

1. James Coleman, Thomas Hoffer, and Sally Kilgore, "Public and Private Schools", Report to the National Center for Education Statistics under Contract No. 300-78-0208 by the National Opinion Research Center. The copy available to me is dated March 1981, stamped "Draft", and contains pp. i - xxix of prefatory material, pp. 1 - 233 of text, and pp. A1 - A14, B1 - B19, R-1 of appendixes.
2. In the rush to relevance, Coleman has forgotten his own scientific stance, expressed earlier in the report:
 

To make such a prediction [of the results of a tuition tax credit], we would need information on the price elasticity of private schooling...By making some heroic assumptions, one might be able to use these data to estimate something about the effect of such a policy; but we will not do so here because we are unwilling to make such assumptions. (p. 75)
3. This costs out to about \$1,500,000 per target child shifted: Total public high school enrollment is about 15 million (p. 18). With, say, an average of 1.5 children per family, that means that about 10 million families would receive the \$1000 income increase. And this \$10 billion policy (as we've seen) would induce about 6600 Blacks, Hispanics, and low-income children to shift. (May one remark that there might be some double-counting between the Black and Hispanic and the low-income flows?) For the record, I should add that 13,525 Anglo, 7,086 middle-income, and 8,429 upper-income, children would also be shifted by the same policy (pp. 72, 74). Thus, the total flow induced by the \$10



billion program would be in the range of 16,000 to 20,000 children (depending on whether one totals the ethnic or the income categories). My rough calculation from figures on p. 30 and p. 72 is that the ethnic composition of the private school population would change from:

Anglo .890,    Black .047,    Hispanic .063

to:

Anglo .888,    Black .048,    Hispanic .064.

4. The common-item subtests are introduced (pp. 157-158) to facilitate measurement of gains from sophomore to senior years. Why they are also used for the estimation of school sector effects escapes me.
5. Actually the procedure is even more complicated than I have described it. For each of the three tests, Coleman has fitted four regressions:

$$\hat{y}_1 = \underline{x}'b_1 \quad \text{public sophomores}$$

$$\hat{y}_2 = \underline{x}'b_2 + zc_2 \quad \text{private sophomores}$$

$$\hat{y}_3 = \underline{x}'b_3 \quad \text{public seniors}$$

$$\hat{y}_4 = \underline{x}'b_4 + zc_4 \quad \text{private seniors}$$

Where  $\underline{x}$  is the vector of family background variables, and  $z = 0$  for Catholic schools and 1 for other-private schools. Let  $\underline{x}^*$  be the family background vector evaluated at the public sophomore means. And let  $y_i^* = \underline{x}^*'b_i$  ( $i = 1, \dots, 4$ ). Then the increments as labelled by Coleman (p. 171) are (as far as I can make out):

Increment at sophomore level for Catholic schools:  $y_2^* - y_1^*$

Increment at sophomore level for other private schools:  $y_2^* - y_1^* + c_2$

Senior increment in public schools:  $y_3^* - y_1^*$ ,  
 while in a separate table (p. 175), labelled "estimated sophomore-to-senior achievement growth...beyond that in public schools" are

Catholic	$y_4^* - y_3^*$
Other-private	$y_4^* - y_3^* + c_4$ .

6. Working with the coefficients and means on pp. A12-A14, I have been able to reproduce some, but not all, of Coleman's estimated increments.
7. Buried in a footnote on p. 185 is an indication of another potential source of bias in the assessment of school-sector effects on test scores:

[S]ome students in all sectors did not take the tests, and the proportion differs from sector to sector. For the mathematics test, it is 9.2 percent for sophomores and 13.0 percent for seniors in the public sector, 4.2 percent for sophomores and 8.8 percent for seniors in the Catholic sector, and 18.2 percent for sophomores and 19.0 percent for seniors in the other private sector.

The non-taking proportions are not given for the other tests, nor is there any explanation of why tests were not taken.

8. For hints of this, see the articles in Time, April 20, 1981 (p. 50), and The New York Times, Sunday April 26, 1981 (p. 19).
9. The private sector was split into its Catholic and other-private subsectors, "because of evidence [unspecified] that students from differing family backgrounds fare differently in these two sectors." (p. 177). As a consequence, "it was necessary to reduce the number of

background characteristics that were controlled, in order to obtain stable estimates" (p. 177).

10. Converted into the effect of both parents having completed college rather than having completed only high school:

For parental education, the difference [i.e. effect tabulated on p. 178] is calculated as the sum of regression coefficients multiplied by  $5(=7-2)$ . (p. 177)

The explanation of this cryptic arithmetic may be gleaned from the student questionnaire items reproduced on p. B-6, which shows that for each parent, the education variable was coded 2 for high school graduate and 7 for college graduate.

11. But not for the other-private-school regressions,

because the numbers of blacks and Hispanics in the sample of these schools is small enough to make estimates unstable (p. 177).

A cynical reader may be forgiven the conjecture that the unreported coefficients had the wrong sign.

12. A presentation of respective sample sizes would have permitted the reader to estimate standard errors for proportions (or at least to roughly estimate them, since the sample is a stratified one). But no such presentation is provided. The tabulated cell frequencies are (stratification-weighted) figures for the population rather than for the sample. It is incidentally unclear whether the stratification was adequately handled in constructing the proportions, a non-trivial consideration since (if my reading of p. 7 and p. 46 is correct) some private schools with high minority enrollment were deliberately sampled.

13. Coleman's obsession with subtle features of a shaky relationship is well illustrated by this passage:

[T]he increase in the proportion of students attending Catholic schools with increase in income (the slope of the curve) is greatest for Hispanics. It is greater for whites than for blacks at low income levels, but, somewhat surprisingly, greater for blacks than for whites at high income levels...[F]or all three racial and ethnic groups the increase in the proportion attending other private schools is lower than that for Catholic schools, except at the highest income levels for non-Hispanic whites. The curve is especially flat for blacks, except at the upper extremes of income.

14. Throughout the report sampling error considerations are introduced by Coleman only when convenient for his argument:

Generally, black Catholics at both low and high income levels (and probably at middle income levels as well, if sampling error were removed) have higher enrollment rates in Catholic schools than white Catholics...(p. 41).

This exception [to the rule that private schools are less segregated than public schools], however, is more likely the result of sampling error than of a general pattern: the Hispanic enrollment in just one of the 27 other private schools in the sample accounts for 64 percent of the total Hispanic enrollment in the other private sector. (pp. 45-46).

By the end of p. 46 "is more likely the result" becomes "is the result."

15. Coleman himself had trouble interpreting the ",999" aspect of the question: his table on p. 74 collapses the seven brackets into these three: "Below \$12,000; \$12,000-\$19,000; \$20,000 or more."
16. A linear function common to all ethnic groups would suffice to indicate how a uniform income increase could move the ethnic composition of the private schools towards that in the public schools: Let  $p = a + bx$  give the probability of private school enrollment as a function of income. If the minority group has mean income  $x_1$ , its overall private enrollment probability would be  $p_1 = a + bx_1$ ; if the majority group has mean income  $x_2$ , its overall private enrollment probability would be  $p_2 = a + bx_2$ . Let  $r = (\text{number of majority students in population}) / (\text{number of minority students in population})$ . Then the initial ethnic compositions (majority/minority) are

$$\begin{array}{ll} \text{private schools} & s = p_2 r / p_1 \\ \text{public schools} & t = (1 - p_2) r / (1 - p_1). \end{array}$$

With  $x_2 > x_1$  and  $b > 0$ , then  $p_2 > p_1$ , so  $s > t$ . The uniform unit increase in  $x$  changes the enrollment probabilities to  $p_1^* = p_1 + b$  and  $p_2^* = p_2 + b$ . And thus the new ethnic composition of the private schools is

$$s^* = p_2^* r / p_1^* = (p_2 + b) r / (p_1 + b).$$

We have

$$s^* = w s + (1 - w) t$$

where

$w = (1 + b) / (1 + \frac{b}{p_1})$  lies in the unit interval. Hence  $s^*$  lies between  $s$  and  $t$ .

17. Thus, for example,  $\sum_i p_i n_i$  will not give the initial number of Blacks in Catholic schools.

Mr. KOPLAN. Senator, excuse me, may I ask just one question before we close?

All of the remarks at the time of the introduction of the bill discuss or mention tuition tax credits basically in regard to children.

But as I read the bill, and I would like you to correct my understanding in this. It is my understanding that anybody who would qualify as a dependent in section 152 of the code, anyone who would qualify—and that would include not only relatives of the taxpayer; it includes the taxpayer, him or herself, the taxpayer's spouse, or somebody living in the home who isn't even related to the taxpayer but qualifies as a dependent—that all of these people, regardless of their age, would qualify for the credit.

Am I correct?

Senator MOYNIHAN. Yes.

Mr. KOPLAN. I am correct?

So age is not a factor. The age of the person attending school or even whether it is a child or a relative of the taxpayer—

Senator MOYNIHAN. It tends to be a factor among fourth graders. [Laughter.]

Mr. KOPLAN. I wasn't asking that, Senator.

My question is, I am curious in these revenue estimates that we have seen with regard to how much all of this is going to cost. Has there been any breakout, for example, in terms of how much of the money expended is going to go for someone living in a household.

Is there any breakout by category?

Senator PACKWOOD. For the moment there is no breakdown by category per type of dependent from the Joint Committee.

About two-thirds of the cost of the bill is college.

Mr. KOPLAN. Or by age—an adult versus a minor?

Senator PACKWOOD. But I will give you a rule of thumb as to how you can make a rough estimate on it.

About two-thirds of the expense of the bill is college. About one-third primary and secondary. And if you were to take from any of the, I assume, normal educational associations that have the percentage of people that are in school that are children of parents—I'll take a guess that may be 75 percent or 80 percent—that would probably be 75 percent or 80 percent of your cost.

And the remainder of it, you go to school yourself. You are entitled to take a tax credit. You send your younger nephew to school who happens to be the nephew of a deceased brother, or something like that. Sure, that would be a dependent. But the overwhelming bulk of it, would obviously be children of parents.

Senator MOYNIHAN. Mr. Chairman, these estimates affect the enrollment.

Mr. KOPLAN. Well, is there any kind of a breakout that has been done or is being done, that indicates how the distributive effects of this bill, dollarwise, breakout by income category.

I didn't see that in the introductory remarks.

Senator MOYNIHAN. The answer is yes.

Mr. KOPLAN. Of this particular bill?

Senator PACKWOOD. If—

Senator MOYNIHAN. If you knew your brief, you would know that is in the literature.

Senator PACKWOOD. You mean by income category, yes.

If you mean by how many people are brothers or sisters of the person taking the credit, as opposed to children, no.

Mr. KOPLAN. Well, do you reach the same results, that proportionately people above the \$25,000 income level would get the greatest proportion of the benefits from this legislation.

I think we had the figure, 59 percent. Do you come to this—

Senator PACKWOOD. Again, you will—

Senator MOYNIHAN. I am sorry.

Quite seriously, Dr. Rivlin has presented this evidence for us. It is in the literature. It is right there on page 3 of the estimate prepared by the Congressional Budget Office.

There is no mystery about this. I mean, why do you come before this committee asking us whether we have information which we have had for 6 months?

It is all here, if you want it. The latest estimate by CBO is dated May 29, 1981, but we had virtually the same thing last year, and we had it the year before. You are welcome to it.

Senator PACKWOOD. Thank you.

[The statements of the preceding panel follow:]



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SUMMARY OF  
 THE CASE AGAINST TUITION TAX CREDITS

ECONOMIC ARGUMENTS

- Tuition tax credits represent a massive tax expenditure of at least 4.7 billion dollars that our nation cannot afford.
- Tax credits are expensive and uncontrollable, thereby adding another large inflationary item to the federal budget.
- The lost revenue would be in the form of non-stimulating credits that do not generate new revenues to replace those lost through the tax credits.
- Tax credits will limit future federal funding for public schools.

PUBLIC POLICY ARGUMENTS

- Tuition tax credits give private schools an unfair competitive advantage over public schools, since private schools can refuse to offer services that public schools must provide and because private schools can be more selective with regard to whom they admit.
- Tax credits would induce an educational caste system by drawing middle and higher income children into private schools and leaving the difficult and expensive to educate children behind.
- Public school parents would be taxed twice: once for public schools and a second time through the tax bonus granted for private school parents.
- Tax credits would result in federal regulation of private schools
- Tax credits will increase paperwork and red tape since increased record-keeping will be imposed on the taxpayer, the schools and the federal government to monitor and audit tax credits.
- Some college students will not be able to afford tuition charges in September when a tax credit is not received until federal tax returns are filed after the following January.
- Tax credits would disproportionately benefit high tax bracket parents.



CONSTITUTIONAL ARGUMENTS

- Tax credits violate the Constitutional principles of separation of church and state because religious schools would be recipients of federal aid.
- Since religious schools or parishes would be beneficiaries of tax credits, federal monies would tend to advance and foster religion at public expense.
- In 1971, the U.S. Supreme Court in Lemon vs Kurtzman established its three-pronged test for constitutionality--a statute must (1) have a secular purpose; (2) have a "primary" effect that neither advances nor inhibits religion; and (3) not lead to "excessive entanglement" of church and state.
- In order to assure tuition tax credits are used for a non-sectarian purpose; and do not advance or inhibit religion, public surveillance and monitoring on school grounds would be necessary thereby leading to excessive entanglements.



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STATEMENT  
OF THE  
NATIONAL EDUCATION ASSOCIATION  
BEFORE THE  
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT  
OF THE  
SENATE FINANCE COMMITTEE  
ON  
TUITION TAX CREDITS  
PRESENTED BY  
WILLARD MCGUIRE  
PRESIDENT  
JUNE 4, 1981

Mr. Chairman, I am Willard McGuire, President of the National Education Association and am here to testify concerning NEA's policy positions on tuition tax credits. I am proud to respond on behalf of the NEA, an organization that enrolls the overwhelming majority of America's teachers.

NEA believes that there are few endeavors this nation has ever undertaken which contribute more to the public welfare than the provision of free public education and equal educational opportunity to all. Those who ardently defend public education are performing an important patriotic duty as we continually strive to improve the quality of education. America's future is in the classrooms of our schools. We take this duty seriously and we appreciate the opportunity to present this statement.

The National Education Association is unalterably opposed to, and will combat with all the resources at our command, tuition tax credits for any level of education, kindergarten through graduate school. NEA believes that tax subsidies for nonpublic schools through tax credits are bad economic policy, poor public policy, and unconstitutional.

#### Economic Policy Issues

The President has proposed a massive new economic program. We have serious doubts about the efficacy, both short- and long term, of this program, and opposed the devastating cuts in federal support for education. However, we appreciate his sincerity and goal of achieving a sound economy with lowered inflation and high productivity. Tuition tax credit legislation, with a potential cost of \$4.7 billion according to the Congressional Budget Office, runs directly counter to the President's economic program.

The \$4 billion of tuition tax credits is automatically lost to the Treasury in non-stimulating credits, credits which will not generate one dollar's worth of new revenues. In future years we can expect the cost to escalate as additional parents claim the credit and pressure mounts to increase the credit. NEA views the tuition tax credit scheme as totally inimical to the goal of the President, the Congress, and the public to reduce inflation. Any tax credit subsidy of private schools must be weighed against the Administration's call for fiscal restraint.

Proponents of tuition tax credits for private schools claim that these subsidies are necessary to relieve them of the burden of "double taxation." NEA supports the right of these parents to choose--and to pay for--their children's education in nonpublic schools. The "double taxation" argument is a red herring. All citizens pay taxes to the local, state, and federal governments to finance programs which promote the general welfare--whether or not an individual taxpayer is in need of or eligible to receive the services. We pay for the construction and maintenance of streets and highways whether or not we drive. We pay taxes to support the American system of tuition-free public education, whether or not we are the parents of school-age children--and we all benefit from having an educated, employable citizenry as a result. Enactment of tuition tax credit subsidies for nonpublic schools would in fact be dual taxation. All would pay taxes to support public education, and all would pay taxes to subsidize a privilege affordable and available to a very few. Where is the simple justice of that?

Public Policy Issues

Economically the tax credit proposal would be a disaster that is matched by the educational effects. Tuition tax credits would, in effect, provide two and one-half times the amount of federal support given public school students to those students in private schools.

Under proposed legislation, tax credits could amount to \$500 per child. The federal government contributes nowhere near \$500 per child for those enrolled in the public schools. In fact, before the massive budget cuts in education, less than \$200 of the current average per pupil expenditure in public schools came from federal sources.

The private school tax credit of \$500 would benefit the parents of 5.6 million students. The parents of the 43.9 million students in public schools would receive no such tax benefit. It would be a gross distortion of the American dream if Congress aided private-sector education while failing to support public education, if Congress supported privileged children at the expense of all children, and fiscally undermined public education. A tuition tax credit subsidy for private schools would have this effect.

Until the enactment of this budget, the federal government was contributing a miniscule eight percent of the total cost of public education. The enactment of a tuition tax credit subsidy for private schools, with its revenue loss of at least \$4 billion, will surely force Congress to cut back on its contribution to public education. That \$4 billion loss will likely come from existing education programs. That is fiscal reality.

Proponents of tuition tax credit subsidies to nonpublic schools estimate that 62.7 percent of credit recipients would have family incomes of under \$20,000.<sup>1</sup> Our reading of available census data,<sup>2</sup> however, not only fails to confirm that estimate, but also shows an interesting contrast between family income levels of public and nonpublic elementary and secondary students.

	Percent of family income under \$20,000	
	Public schools	Enrolled in Nonpublic schools
Elementary students	71.2%	54.5%
Secondary students	61.6%	39.9%

NEA does not question whether quality private and parochial schools should exist. Parents and students should not be denied their right of free choice of schools--nor should the government subsidize their exercise of that right.

Nonpublic schools tend necessarily toward exclusivity since they exist to serve selected enrollees on some special-interest basis: creed, sex, economics, intellectual capacity, race, and so forth. If there were no unique or exclusive purpose, there would be no reason for their existence.

Proponents of tuition tax credits argue that all parents would have the option of tuition tax credits and therefore would be eligible to receive the same tax break. This is a specious argument. The "choice" provided by tax subsidies for private schools would not be available and accessible to the majority since the actual cost of private school tuition is prohibitive to many. The real tax break will be for the middle and upper income parents who

can afford to pay the balance of the tuition bill--that not subsidized by the tax credit. Most private schools require "up front" tuition payments in the fall. A tax credit applied to an April tax bill will not assist lower and middle income parents to participate.

The public schools are obligated to enroll and to educate all comers regardless of innate ability, handicap, proficiency or deficiency in English. The argument of proponents that fair and healthy "competition" would result from tax credits ignores public policy of long standing. The public schools must educate all. They have never been designed, nor should they be, to compete on an equal footing with schools with discriminatory enrollment policies.

Private schools are not mandated to accept children who are handicapped, discipline problems, or otherwise difficult to educate. In fact, only about 2.7 percent<sup>3</sup> of all religious schools provide programs for the handicapped and only three percent<sup>4</sup> of all nonpublic schools offer vocational education.

Tax credits, as a federal policy, would promote the success of private schools, allow special benefits through taxes for wealthier families, and undermine the support of public schools through an unfair and unwise competition. The result would be an educational caste system. It is not inconceivable that the elite private schools and the disadvantaged public schools will increasingly amount to a separate and unequal dual education system in the United States.

Ironically, at a time of considerable conservative clamor for less federal involvement in education, tuition tax credit subsidies for private

schools will force the federal government to evaluate and regulate private schools. Since tax credits would be given for private school tuition, taxpayers have the obligation to demand that some certification of those schools as legitimate be made.

The federal government cannot launch a new multi-billion dollar subsidy program without accompanying regulations and minimum standards. Probably through the IRS, the federal government will have to judge the legitimacy of a school benefiting from this new indirect subsidy. Anything less than a careful scrutiny and regulation of recipient private schools would leave the federal government open to legitimate complaints regarding the utilization of the taxpayers' tax dollars. To ensure that carelessly granted tax credits not become an additional burden on those paying taxes, the federal government will have to empower an agency to prevent fraud and abuse of the tax credit.

Certain extremist groups which might be encouraged to set up schools have the Constitutional right to free speech and freedom of association. Never before, however, have they been eligible to operate a school and receive a federal subsidy. Nor should they become so.

Local citizens and their elected public school boards are held accountable for how tax dollars are spent in the public schools. Taxpayers would have the right to demand the same accountability from private schools benefiting from the federal subsidy provided by tuition tax credits. We view such scrutiny as inevitably running afoul of the "excessive entanglement" test found impermissible by the Court in Lemon v. Kurtzman.

There is one more important point in determining public policy. The public does not favor tuition tax credits. In a Roper poll cited in 1978<sup>5</sup> by the distinguished Senator from South Carolina, Ernest F. Hollings, 64 percent of the public opposed tuition tax credits for nonpublic elementary



and secondary education. And when state aid for nonpublic schools has been put before the voters in statewide referenda conducted over the decade from 1967 to 1976, such schemes were overwhelmingly rejected, as detailed below.<sup>6</sup>

STATE	YEAR	VOTE AGAINST AID	VOTE FOR AID
New York	1967	72.5%	27.5%
Michigan	1970	57 %	43 %
Nebraska	1970	57 %	43 %
Maryland	1972	55 %	45 %
Oregon	1972	61 %	39 %
Idaho	1972	57 %	43 %
Maryland	1974	56.5%	43.5%
Washington State	1975	60.5%	39.5%
Missouri	1976	60 %	40 %
Alaska	1976	54 %	46 %

### Constitutional Issues

NEA has long fought to protect the First Amendment's guarantees regarding the exercise of religion free from governmental influence.

We were a founding member of the National Coalition for Public Education and Religious Liberty (National PEARL), with the benefit of counsel of the renowned First Amendment scholar Leo Pfeffer, Counsel to PEARL. To subsidize at federal expense certain groups of individuals so that they may exercise their religious preferences would have the effect of advancing religion in violation of the First Amendment.

A long line of Supreme Court cases in recent years has dealt with the constitutionality of various methods of providing aid to nonpublic elementary and secondary schools. The Court has consistently struck down provisions which either directly or indirectly have the effect of advancing religion and offsetting the constitutional provisions for separation of church and state.

The only forms of "aid" which the Court has found to be consistent with the First Amendment are those which provide general welfare and health services,

textbooks, and transportation to all children. In a recent opinion, Wolman v Walter, 97 S. Ct. 2593 (1977), the Supreme Court was careful not to extend this doctrine beyond its previous decisions and indicated that when faced with the question of expanding nonpublic aid or of prohibiting it, prohibition should be the favored course.

The unconstitutionality of the tuition tax credit scheme for elementary and secondary nonpublic schools is without question in light of the Supreme Court's ruling in Committee for Public Education and Religious Liberty v Nyquist, 413 U.S. 756 (1973). The Court in Nyquist found that a New York statute providing income tax benefits to parents of children attending nonpublic schools to be a violation of the First Amendment in that it would have the "impermissible effect of advancing the sectarian activities of religious schools."

Although the New York statute was perpetrated under the guise of "tax deductions," rather than tax credits, the Court saw no distinction in the labels and indicated that regardless of the name, its effect was unconstitutional. (Whether you call it a tax credit, tuition reimbursement, or tax deduction, the account books look the same and the effect is the same.)

Supporters of tuition tax credits contend that the First Amendment is not violated since the tax benefits adhere to the parent of the nonpublic school child, not to the private school itself. But the Supreme Court in Nyquist specifically rejected this argument and found that the effect of the aid is "unmistakably to provide desired financial support for nonpublic, sectarian institutions."

NEA POLICY ON TUITION TAX CREDITS**A-10. Deleterious Programs**

The National Education Association believes the following programs and practices are detrimental to public education and must be eliminated by the united teaching organization: performance contracting; tax credits for tuition to private and parochial schools; voucher plans; planned program budgeting systems (PPBS); and evaluations by private, profit-making groups.

The Association also believes that other tax credit programs, management by objective systems, and revenue sharing programs have at times been implemented in ways that are harmful to public education. It therefore calls for a monitoring of such programs and a concerted effort by the united teaching organization to prevent such abuses. (74, 79)

**Opposition to Tuition Tax Credits**

The NEA Representative Assembly commends the leadership of the NEA for activities to date in opposing the tuition tax credit legislation. The Assembly urges all state and local affiliates to join with the NEA leaders in an all-out effort to protect public education from the devastating effects of this proposed legislation. (1978-25)

\* \* \*

The 1978 NEA Representative Assembly reaffirms the position of the National Education Association that no tax credits for tuition shall be given to private and parochial education. The Representative Assembly directs that the Senate of the United States be informed of this position and urged to vote against any such tax credits. (1778-59)

## Footnotes

1. United States Catholic Conference, "Campaign for Educational Assistance," revised March 9, 1981, p. 3
2. Institute for Research on Educational Finance and Governance, IFG Policy Perspectives, "Tuition Tax Credits for Schools: A Federal Priority For The 1980's?" (sic), by James Catterall, undated (spring 1981), p. 3
3. League of Women Voters of the United States, "Tuition Tax Credits Facts," April 6, 1981
4. Ibid.
5. The Fritz Hollings Report, August 1978, p. 2
6. Americans United for Separation of Church and State, letter from Andrew Leigh Gunn, Executive Director, to Honorable John Sparkman, March 24, 1978

STATEMENT OF DOROTHY SHIELDS, DIRECTOR, DEPARTMENT OF EDUCATION,  
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

I am pleased to testify on behalf of the AFL-CIO and its 14 million members in opposition to S. 550. The working people of America believe now as they believed in the early days of this country that quality public education for their children and for themselves is a priority consideration in the improved quality of life to which we all aspire. It is the labor movement's proud heritage that we were among the first to advocate the concept of free universal public education. The AFL-CIO is vitally interested in education because we not only represent teachers, administrators, office workers and maintenance workers, but also because of our children's stake in these public decisions and our members' stake in lifelong learning opportunities.

For more than a decade, tuition tax credits have been proposed and rejected by the Congress. The concept today is no more worthy of Congressional approval than it was in the past. The tuition tax credit bill (S. 550) that has currently been introduced in the U.S. Senate does not advance education; instead it represents a threat to public education in America. Combined with already declining enrollments and the cutbacks in both State and Federal support, this bill promises to damage our public schools still further.

S. 550 provides a refundable tax credit for students in the private college, vocational, elementary and secondary schools. The credit would be equal to 50 percent of educational expenses up to a maximum \$250 in the first year and \$500 per year thereafter. The Joint Committee on Taxation estimates that S. 550 will reduce Federal budget receipts by \$99 million in the coming fiscal year, \$2.69 billion in fiscal year 1983, and rising to \$6.9 billion in fiscal year 1986.

It should be made clear that we are not discussing educational benefits for children alone. The credit can be used for the taxpayer, his or her spouse as well as any dependent of the taxpayer. We should point out that under the Internal Revenue Code (26 U.S.C. Section 152) dependents are defined not only as children of a taxpayer but can include brothers, sisters, parents, grandchildren and in-laws, etc. In addition, when fully effective, the credit will be allowed for graduate students and part-time students of any age so long as they are the taxpayer, spouse or dependents.

To illustrate, a taxpayer could receive \$500 per year for each dependent, each year from 1st grade through graduate school. A lawyer, for example, attending private schools all the way through his education—19 Years—would provide his parents with \$9,500 worth of tax credits. If, of course, the family was educating two would-be lawyers, their drain on the Treasury would be twice as much.

Tuition tax credits are an open ended revenue loss at a time when Congress and the Administration are trying to balance the budget and cut hard into federal programs, including a huge 30 percent cut in federal aid to education.

The AFL-CIO reaffirms its long standing opposition to tuition tax credits. Were S. 550 to be enacted into law:

Tax credits would encourage the establishment of an educational caste system by spurring the exodus of advantaged children while leaving the handicapped and learning-disabled—not to mention the poor—behind.

Tuition tax credits would work to return racial segregation to the public schools, thus reversing gains made in school integration.

Tax credits would cost the United States Treasury billions of dollars per year in lost revenues, add another open ended tax expenditure item to the budget, which is not subject to normal processes of authorization and appropriations, thus causing increases in other taxes or forcing reductions in direct educational aid programs at all levels.

Taxpayers would be taxed twice: once to finance public schools and the second time to subsidize a tax credit for nonpublic schools.

Tax credits would provide about four times as much Federal aid per pupil for nonpublic school education as is currently provided for public school education.

Most of the credits (59 percent) would go to families with incomes of over \$25,000 whereas the traditional federal role in education has been to target assistance to those people and communities where the need is the greatest.

The billions of dollars in lost government revenue in S. 550, we believe, would only be the camel's nose under the tent. It would not be long before demands to increase credit allowances would increase the drain on the federal treasury many times the initial outlays.

Tuition tax credits would lead to the undermining of one of the greatest achievements of American democracy: a school system for all children which will provide them with the education to realize their maximum potential.

We believe it is an obligation of the federal government to support the nation's public schools. Tuition tax credits, unfortunately, divert vital funds to the financing of private schools and represent poor tax policy.

Estimates of the distributive impact of tuition tax credits were made in 1979, in a report issued by the Office of the Assistant Secretary for Planning and Evaluation of the Department of HEW.

That report lent support to the AFL-CIO's position that tuition tax credits favor those in higher income and are regressive across family income categories.

In its February 1981 report the Congressional Budget Office reached the same conclusion that schools and colleges could use the taxpayers as a conduit by increasing their charges in order to capture a portion or all of the benefit.

S. 550 bases its proposal for tax credits for private elementary and secondary education on a declaration of policy that the federal government has a moral obligation to promote private schools. We disagree. The AFL-CIO believes that federal aid to education should not be restructured in order to advantage private schools over the public school system. We do believe that federal aid to private schools as provided in the formula embodied in the Elementary and Secondary Education Act is fair and appropriate.

The AFL-CIO believes that tuition tax credits are a wide departure from the concept of the federal government's role as spelled out in the Elementary and Secondary Education Act which targets federal aid through specific programs.

There are also continuing questions about the constitutionality of tuition tax credits for students who attend private schools. Since the overwhelming majority of students in nonpublic schools attend church-affiliated institutions, federal dollars through tuition tax credits would in effect be supporting religious education. This raises serious constitutional questions relating to the separation of church and state. Several state tuition tax credit proposals have already been held unconstitutional by state and federal courts. The Supreme court's *Nyquist* decision finding New York State's tuition tax credit law unconstitutional is clear on this question.

In the words of Senator Ernest Hollings, careful study leads to the convincing conclusion that tuition tax credits "would turn our nation's education policy on its head, benefit the few at the expense of many, proliferate substandard segregation academies, add a sea of red ink to the federal deficit, violate the clear meaning of the First Amendment to the Constitution, and destroy the diversity and genius of our system of public education."

Accordingly, we see no reason to abandon the present concept of federal aid to education, for both public and private school students, established by the Elementary and Secondary Education Act with AFL-CIO support. The AFL-CIO believes the existing structure of federal aid which allows participation of nonpublic school students on the same basis as students in public schools is the appropriate way to provide for the special needs for all children. We urge rejection of S. 550 and all other similar tuition tax credit bills.

#### STATEMENT BY THE AFL-CIO EXECUTIVE COUNCIL ON TUITION TAX CREDITS

As national debate winds down on the question of education tuition tax credits, the AFL-CIO remains convinced that this form of student aid is inappropriate and that the aid package put forward by the Carter Administration for both elementary and secondary education and higher education is the proper approach.

The Administration proposals would increase college student assistance through the Basic Education Opportunity Grants by \$1.2 billion. This would move the level of spending for this important program to \$3.3 billion—3.1 million additional students would benefit as student participation moves from 2.2 million to approximately 5.3 million. We strongly support H.R. 15 and companion bill S. 1753, bills to extend the present Elementary-Secondary Education Act, which should be promptly passed by the Congress.

Much of the current debate centers on the question of extending tax credits to those parents who choose to send their children to private schools at the elementary-secondary level. We categorically reject this idea. It is a wide departure from the original concept of the Elementary and Secondary Education Act which targets federal aid to specific programs. In fiscal year 1979 the Carter proposals would channel \$100 million to \$250 million to private schools at the elementary-secondary level from the \$6.9 billion budgeted for elementary-secondary education. Furthermore, it is estimated that aid to private schools could double in fiscal year 1980. Accordingly, we see no compelling argument to abandon the original concept of federal aid to education, for both public and private school students, established by the Elementary-Secondary Education Act.

The tax credit approach, as we have noted in the past, would reduce federal revenues by some \$4.7 billion depriving other deserving federal programs of the necessary funds for their implementation.

Of the several bills introduced in the U.S. House of Representatives, H.R. 12050 reported by the House Ways and Means Committee is the most likely to reach the House floor. It is currently awaiting a rule from the Rules Committee. During the mark-up of the bill in Ways and Means, Representative Waggoner (D-La.) succeeded in removing tax credits from elementary-secondary education. This action, however, left intact the tax credit approach for student aid at the higher education levels and we oppose that result.

We call upon the Congress to reject all tuition tax credit bills and to adopt the Administration's proposals to increase tuition grants to college students as an alternative to tax credits. This approach will insure that federal funds provide maximum tuition assistance to those worker-families who truly need that assistance, while protecting the college students right to choose either a public or private institution.

We urge the passage of H.R. 15 and S. 1753. We believe these policies to be in the national interest.

**FEDERATION OF CATHOLIC TEACHERS**

LOCAL 2092 • Organized in 1963 as The Catholic Lay Teachers Group

Harold J. T. Isenberg, President

Margaret L. Menard, Secretary • Lorraine A. Scully, Treasurer



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Testimony of  
HAROLD J. T. ISENBERG  
Before the Senate Finance Subcommittee on  
Taxation and Debt Management  
Washington, D.C.  
June 4, 1981



SUMMARY OF PRINCIPAL POINTS

1. Catholic school teachers support and urge the passage of the "Tuition Tax Credit Act" (S. 550).
2. The fundamental and constitutional right of parents to educate their children in the school of their choice is being threatened by spiraling educational costs and inflation.
3. Freedom of educational choice does not exist if the only viable educational system open to parents is the public schools.
4. Tax credits would primarily benefit low and middle income families earning between \$10,000 and \$20,000 annually.
5. Nonpublic schools save the taxpayers' money and often times do a better job of teaching students to read and write.
6. Nonpublic church-related schools perform a dual function and teach secular as well as religious subjects.
7. Catholic schools, which make up 90% of all nonpublic schools, are attracting an increasing number of minority students, and internally and on a percentage basis are less segregated than public schools.
8. Tax credit legislation like previous constitutional forms of indirect aid to nonpublic schools would directly assist parents and/or students in preserving the alternatives of choice.
9. We believe that the U.S. Supreme Court, which has admitted to only "dimly perceiving the boundaries of permissible governmental activity" in the area of nonpublic school assistance, will find tax credits to be constitutional.
10. Tax credits directly aid those who bear the brunt of tuition expense; are simple & inexpensive from an administrative point of view; and are not prohibitive in terms of costs.
11. Tuition Tax Credits will prevent a public school monopoly and insure the fundamental and constitutional rights of nonpublic school parents and their children to viable educational alternatives.

### INTRODUCTION

My sincere thanks to the United States Senate Finance Subcommittee on Taxation and Debt Management for your courtesy in permitting me to make a presentation today. I am Harold J.T. Isenberg, and I serve as President of the Federation of Catholic Teachers.

My organization was incorporated in 1963 as the Catholic Lay Teachers Group and gained formal recognition and collective bargaining rights in 1969 for the 3,000 parish school teachers employed by the ten county New York Archdiocese. Ours is the only Catholic teacher union in the nation to represent both elementary and secondary school teachers on a diocesan-wide basis. We help educate approximately 136,000 students, many of them our own children.

The Federation of Catholic Teachers has long been active in and concerned with issues of social justice both within and outside of the Catholic Church. This is why we strongly support and encourage the passage of the bill submitted by Senators Robert Packwood, Daniel Patrick Moynihan, William Roth, and others, which if enacted into law, will become known as "The Tuition Tax Credit Act" (S. 550).

### THE RIGHT OF PARENTS

The fundamental and constitutional right of parents to educate their children in nonpublic schools, affirmed by the United States Supreme Court in Pierce v. the Society of Sisters, is being threatened by spiraling educational costs and inflation. Government has heavily tipped the economic scales in favor of public schools so that nonpublic school parents exercise their right of educational choice only with severe personal sacrifice. Accommodations such as the proposed "Tuition Tax Credit Act" (S. 550) must be enacted in justice in order to secure the educational rights of nonpublic school parents. Tax credits are not aid to schools - they assist parents, while preserving the right of educational freedom of

choice. This right, in the instance of parochial schools, also involves the exercise of the right of freedom of religion. Parents should not have to pay twice to exercise these basic rights. Further it is clear that our tax laws do allow relief to taxpayers who shoulder certain burdens. This does not discriminate against others who get no benefit because they do not have the expense.

One cannot dismiss the double taxation involved for nonpublic school parents by saying that those who do not use public beaches, libraries, transportation, etc., also have to pay for these items. The distinction is that we are not talking about a whim or a luxury. We are talking about the fundamental and constitution right of parents to have their children educated in the school of their choice.

In Catholic Education Faces Its Future, Neil G. McCluskey, S.J., made the following observations regarding parental rights and governmental assistance to nonpublic schools:

"The states have passed compulsory school attendance laws, and to assist parents to comply with this legislation, have established a system of free public schools, but without any provision in them for religious training. To achieve the common good of accessible free education, the states tax all citizens alike to form a common pool for the support of education. As a result the states are able to provide for their school-age children the substantial benefit of free education and certain auxiliary benefits related to schooling. For more and more Catholic families of moderate and small means, this can only take place within the type of school the state itself chooses. The higher taxes rise, the greater the squeeze on the Catholic parent and the less real freedom of choice he has in choosing a school for his child.

"Many Catholic parents judge that in all conscience they must send their children to a Catholic school because they believe that secular education during the child's formative years is best integrated with religious training. Or they may simply prefer this kind of schooling. The Catholic parent looks to the public school not reproachfully but regretfully.

"A family seeking to follow simultaneously the dictates of conscience and the compulsory-education law may not now, for all practical purposes, share in the state's provision for the common welfare. In the practical order, the state has set up what amounts to a religious test. Children in Catholic schools would qualify for free schooling and all related benefits provided by the state for its junior citizens EXCEPT that their parents have placed them in a Catholic school. If public benefits are so administered that citizens must do violence to their consciences in order to

share in them, then the benefits are discriminatory. Perhaps Catholic parents should look at things differently. Their feeling of frustration, however, is not assuaged by telling them they are 'free' to have their own schools, as they watch increasing subsidies for public schools steadily pricing Catholic-school education out of the market."

THE PROSPECT OF A PUBLIC SCHOOL MONOPOLY

We are not opposed to public schools nor challenging their importance and worth, but we are unalterably opposed to an educational monopoly over our children. The prospect of such a situation would be a disturbing departure from the American tradition of educational pluralism. We cannot have freedom of choice if the only viable educational system open to parents is the public school. No matter how scrupulous or altruistic the monopolist may be, monopoly reduces one's options and therefore the freedom of choice. As C. Albert Koob and Russell Shaw pointed out in S.O.S. for Catholic Schools:

"The idea of monopoly in education is peculiarly abhorrent. Here the values at stake are of an entirely different and higher order than whether an automobile buyer shall have the option of choosing among the products of one or several automobile manufacturers. They belong to the moral and intellectual order, and in these areas of life the exercise of free choice is pre-eminently important. And it is essential that this possibility not be merely negative. (That is, the absence of coercion) or theoretical: There must, rather, be the possibility of genuine, practical free choice.

So far as education is concerned, this means that Americans should have both the right and the opportunity to choose from among diocese schools and school systems and that non-public schools must make up more than a 'token' system, but must be numerous enough to accommodate parents and students who choose this kind of school."

Traditionally the American school system is comprised of both public and nonpublic schools. The danger today is that the nonpublic school will disappear as a realistic option for families of average income. The vast majority of nonpublic school children, 3.7 million of 5 million attend schools in our nation's large metropolitan areas. Of this number, 62.7% come from families with incomes of under \$25,000. In the inner city, 72% of the children come from households earning under \$15,000

a year. These are not the wealthy. Tax credits for these parents are not only a matter of fairness, they are an absolute necessity.

It is true, and a recent National Catholic Educational Association study verifies the fact, that enrollment in Catholic elementary and secondary schools throughout the country has remained relatively constant over the past five years. However, it should be remembered that between 1965 and 1976 enrollment in these schools decreased by 27% with nonpublic schools closing at about the rate of one every school day. It is to prevent another sharp decline that tax credits are needed. As Edward Anthony of the United States Catholic Conference has said, "let there be no mistake about it, to thousands of parents held within the ever tightening grip of poverty, or those brought perilously close to it by an errant American economy, the potential loss of (educational) freedom of choice is real."

Our children and their parents need to be able to choose and afford the school of their preference. Getting a good education is a long-term process that begins with a child's earliest experiences. The alternatives of choice must be available to all at each step in the educational process to be meaningful. Let us not price our children and their parents out of the college, elementary or secondary school of their choice.

#### NONPUBLIC SCHOOLS SAVE TAXPAYERS' MONEY

Frequently those who would deny nonpublic school parents some form of help ignore the fact that parochial and other private schools provide a great service to all the citizens of this nation. We, too, teach children to read and write - often time better than public schools. In the New York Archdiocese, elementary school students consistently score a half year or more beyond the national reading average, while only 50% of their public school counterparts are on grade level.

If, for example, New York parochial schools were not providing an education for some several hundred thousand students, the taxpayers in our state would have to pay significantly more money to the public schools to do it. In the New York City area the per pupil cost of educating a child in a Catholic school is \$650 per year on the elementary level, and \$1,350 on the secondary level. The public school costs, however, are

\$2,775 elementary, \$3,236 junior high, and \$2,716 in the high schools. Allowing for contributed services supplied to Catholic school students out of the public school budget, and for the difference between school levels, it comes out that the Catholic school child is educated at a cost one-quarter to one-half the cost for educating the same child in a public school. As long as nonpublic schools are in existence and educate large numbers of children, more money is available per pupil for the public schools - not less. For example, in New York City alone 25% of the students attend nonpublic schools, while the state has the highest public school per pupil expenditure in the country and has experienced a 300% increase in public school funding in the past eight years.

The argument that tax credits would hurt public schools is not valid. Edward Anthony, of the Catholic Conference's Education Department, made the following observations regarding this issue in a recent speech before the American Association of School Administrators:

"First of all, there is no evidence to support the assertion (that tax credits will mean the demise of the public school system). States which either have, or have experimented with some form of educational tax relief have not experienced a significant loss in public school enrollments. Second, the assertion that the quote-unquote "good" students will leave the public schools also has no basis in fact. If by "good" we mean wealthy or even middle-class students, it is foolish to assume that a minimal tax credit will be any incentive for wealthy parents to move their children. Wealthy parents who wish to send their children to nonpublic schools have already made that choice. Those of you who are familiar with the basic economic principle of 'marginal utility' will understand that the family for whom a \$250 tax credit will mean something is the family that must scrimp and save to get \$250 for tuition for their children. They are the families that will truly benefit."

#### PAROCHIAL SCHOOLS AND SECULAR EDUCATION

The dual role of nonpublic and especially church-related schools has been eloquently set forth by Associate Supreme Court Justice Bryon White who stated in Board of Education v. Allen:

"Underlying these cases (previous decisions involving government assistance to non-public education), and underlying also the legislative judgements that have preceded the Court decisions, has been a recognition that private education has played and is playing a significant role in raising national levels, knowledge,

competence, and experience. Americans care about the quality of the secular education available to their children. They have considered high quality education to be an indispensable ingredient for achieving the kind of nation, and the kind of citizenry that they have desired to create. Considering this attitude, the continued willingness to rely on private school systems, including parochial systems, strongly suggests that a wide segment of informed opinion, legislative and otherwise, has found that these schools do an acceptable job of providing secular education to their students. This judgement is further evidence that parochial schools are performing, in addition to their sectarian function, the task of secular education."

Like Justice White, we do not choose to cast our defense of non-public schools in the form of an attack on the motives or ideology of those in public education. Both nonpublic and public schools have made and continue to make enormous contributions to American society. Unfortunately, unlike nonpublic schools, public schools are the ones who are monolithically alike when they excluded from their programs religious values and the religious dimension of the human experience. It has been said that value-free education is an impossibility, since values of one kind or another are inevitably conveyed by the educational process. Therefore, in omitting certain areas of human experience from the classroom, public schools implicitly "teach" that these matters are of no great importance or concern and can reasonably be passed over by the student. Unlike other groups in society, our parents have no possibility of obtaining redress for this situation, since a firmly held legal and judicial tradition bars the introduction of specifically religious values or concepts into the public school. In contrast, nonpublic and Catholic schools can point to a "difference where it counts" in attracting parents and children to their schools.

Catholic schools are, also, attracting an increasing number of minority students. The percentage of Black and Hispanic students has grown steadily over the last decade and now, according to the National Catholic Educational Association, accounts for 8.1 % and 8.3% of the total enrollment in all Catholic schools. In the New York Archdiocese 80 of the students in Manhattan and 60% of those in the Bronx are

minority students. Our schools are neither elitist or segregationist. Parochial schools are neighborhood schools and reflect the population which they serve. We agree that the current tax credit proposal must maintain its present safeguards to prohibit the claiming of a tax credit for the purpose of sending children to segregationist institutions.

In his report on Public and Private Schools, Dr. James Coleman found, that from a classroom perspective, nonpublic schools are the best integrated. An adjustment in family income, through tax credits, would further increase the number of minority students in the nonpublic sector, not make it more elite. He, also, found that Catholic schools more closely resemble the ideal of the "common school" where children from different family backgrounds achieve well.

Other findings of Coleman which are worthy of notice are that between the sophomore and senior years, 24% of the students in public schools drop out, compared to 12% in Catholic schools and 13% in other nonpublic schools. If there were no private schools, segregation patterns in public schools would be about the same, Coleman states. Internally, and on a percentage basis of total enrollment, nonpublic schools are the least segregated. Even when controlling for family background factors, students in Catholic and other nonpublic schools achieve at a higher level than public school students. The private schools have a lot of what seems important to higher scholastic achievement - "greater academic demands and more ordered environment," according to Coleman.

It is obvious to most that the public schools serve not only the children they enroll but the total community through the students who are educated. The same is true of Catholic schools. We not only serve our students directly, but through them we serve the total community. This is the way in which any school carries out its role of service and it seems oddly short-sighted to ignore that fact in the case of nonpublic and church-related schools. Our schools have long been an integral part of the nation's educational establishment. They supplement in many ways the main task of public schools and provide an opportunity for experimentation in educational methods since they are relatively unhampered by



bureaucratic red tape or inhibited by political pressures. They give a spur of competition to the public school - not the cut-throat competition of two institutions each trying to out distance the other, but the fruitful competition of self-improvement. Both systems benefit and progress results.

#### HISTORY OF TAX-AID CONSIDERATION

The idea of indirect assistance to nonpublic institutions is not new. In the past the United States Congress has given aid to both public and nonpublic schools through the Reserve Officer Training Programs, the School Lunch Act of 1949, the Higher Education Facilities Act of 1963, the Higher Education Act of 1965, and the Elementary and Secondary Education Act, also of 1965. Both the School Lunch Act and the Elementary and Secondary Education Act have provided benefits to students in non-public and church-related elementary and secondary schools. Tax credit legislation like previous constitutional forms of indirect aid to non-public schools would directly assist the parent and/or students in preserving the alternatives of educational choice. We feel that it would meet the constitutional test set forth by the Supreme Court in the Allen case:

"What are the purpose and primary effect of the enactment? If either is the advancement or inhibition of religion, then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the structures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion."

Again, the Supreme Court reaffirmed the Allen decision in a case involving New York City's tax exemption of church property and observed:

"Making textbooks available to pupils in parochial schools in common with public schools surely was an 'aid' to the sponsoring churches because it relieved those churches of an enormous, aggregate cost for those books. Supplying of costly teaching materials was not seen either as manifesting a legislative pur-

pose to aid or as having a primary effect of aid controvening the First Amendment. In so doing the Court was heeding both its own prior holdings and our religious tradition . . . With all the risk inherent in programs that bring about administrative relationships between public education bodies and church-sponsored schools, we have been able to chart a course that preserved the autonomy and freedom of religious bodies while avoiding any semblance of established religion. This is a 'tight rope' and one we have successfully traversed."

While it is true that the Supreme Court has admitted in Tilton v. Richardson to "only dimly perceive the boundaries of permissible government activity in this sensitive area of constitutional adjudication", we feel that tax credits for nonpublic elementary and secondary schools are constitutional, appropriate, and necessary.

Our High Court has seen no difficulty in approving federal grants and loans for nonpublic colleges and universities. It has rejected the notion that simply because the school is religiously affiliated, it is incapable of distinguishing between secular and religious subjects.

Associate Justice White in dissenting on the Lemon v. Kurtzman case mused:

"Surely the notion that college students are more mature and resistant to indoctrination in a makeweight, for the Court in Tilton is careful to note the federal condition of funding and the enforcement mechanism available. If religious teaching in federally financed buildings was permitted, the powers of resistance of college students would in no way save the federal scheme. Nor can I imagine on what basis the Court finds college clerics more reliable in keeping promises than their counterparts in elementary and secondary schools. . ."

#### ADVANTAGES OF THE TAX-CREDIT CONCEPT

Especially in view of the Supreme Court's decisions, it is imperative that Congress act on the proposed "Tuition Tax Credit Act" in order to maintain for all Americans the basic right we have to better ourselves through education and the right of parents to educate their children in nonpublic schools. We feel that the income tax credit concept has three

basic advantages. First and foremost, it gives aid directly to those who bear the brunt of tuition expenses. Every student or parent of a student who is not self-supporting can take advantage of the credit. Second, the tax credit is simple and inexpensive from an administrative point of view. Finally, the cost of the program would not be prohibitive to those concerned with cost. We remind them that the government allows tax advantages to businesses and financially supports the advanced training of their employees while spending billions for write-off for foreign corporations and oil companies. Yet, the parent or student trying to attend the college, elementary, or secondary school of their choice has no such advantage. The current inequitable situation particularly hurts poor and middle income families. It is time we recognize our obligation to insure educational freedom of choice for all Americans by giving them as much assistance as possible.

For all of the reasons set forth above and primarily to prevent a public school monopoly and to insure the fundamental rights of our parents and their children to viable educational alternatives, we urge passage of the "Tuition Tax Credit Act" as proposed by Senators Packwood, Moynihan, and others.

Again, our thanks for your time and consideration in this very important matter.

Senator **PACKWOOD**. We will go on with the panel.

Jack Clayton, Rabbi Goldenberg, William Billings, and Dr. Ruiter.

Let's let a few people clear out of the room, just a moment, and the door close, and then we will go right on.

Again, I will ask this panel. Do you want to go in the order that you appear on the witness list, or do you have some other pre-arranged order?

Then we will go with Jack Clayton first.

**STATEMENT OF JACK CLAYTON, AMERICAN ASSOCIATION  
OF CHRISTIAN SCHOOLS, NORMAL, ILL.**

Mr. **CLAYTON**. My name is Jack Clayton. I am Washington representative for the American Association of Christian Schools, and I deeply appreciate the opportunity of testifying here today.

There is one consistent principle that the churches and schools who support our association have. That is, we accept no Federal funds and we want no Federal controls.

The subject of tuition tax credits has received very careful consideration by our association, and we commend all those Members of Congress who have worked so hard on it. I have worked with many of the people, trying to see if some acceptable legislation could be developed.

We support the concept of tuition tax credits. We feel that it is a good one. We feel that it will provide fair and equitable tax relief to parents who have to pay for two school systems.

The inequities in the present tax structure are strikingly illustrated by neighboring Fairfax County, Va., where a staggering \$2,833 per child is spent by the school system.

A family with \$20,000 of taxable income is allowed only a \$240 reduction in Federal taxes when they have one child. This \$240 is a mere pittance for parents who must feed, clothe, and educate the child, and provide for countless other needs.

We have examined the first amendment arguments that opponents have raised against tuition tax credits, and we find them to be fallacious. A large part of the schools who support my association are Fundamentalist Baptists, and have a long tradition of strong feelings on church-state relations.

Baptists were beaten and flogged 200 years ago. They paid a dear price right here in Alexandria, for example.

The Reverend Jeremiah Moore was jailed for preaching and teaching without a license. He was defended by attorney Patrick Henry who also defended many other Baptist preachers. We feel that we have paid the price over the years, and we resent being left out of the secular history texts. Although historian William Sweet has pointed out that Jefferson wanted, on his tombstone, recognition of his authorship of the Statute of Virginia for Religious Freedom, Sweet states that:

Justice compels the admission that Jefferson's part in this accomplishment was not so great as that of James Madison, nor were the contributions of either or both, as important as that of the humble people called Baptists.

We still maintain that tradition, not only a tradition but very strong feelings about constitutional government. We feel that the tuition tax credits do not violate the first amendment.

There are many provisions for deductions and exemptions in the Tax Code for all kinds of expenses in our personal lives. They include everything from blindness to taxes to all kinds of expenses that are made as a matter of public policy.

Congress can vote them in or delete them, and it should pose no constitutional problem. There are many other arguments that can be raised, and I will have to just omit them for the sake of brevity, and move on to the conclusion.

In determining whether to support tuition tax credits, my association had to look at the realities of recent history of Government relations with religious institutions.

It is not a happy chapter in American history. There have been abuses with title IX regulations and only now has some relief been forthcoming.

However, I have here a Civil Rights Commission report where it is recommended that title IX regulations be issued to all tax-exempt schools based on tax-exemption.

These title IX rules are horrendous. There are many other things—we are particularly concerned that the Internal Revenue Service persists in its attack on private schools and Christian schools in particular.

We have legislation prohibiting funds for that activity, but they continue. So we fear, that if tuition tax credit legislation is enacted, at this point in time, that it will aggravate this process despite some very strong statutory safeguards that are being written into the bill.

We regret that we live in an era of sociological jurisprudence and not of written law. These legislative safeguards would simply be ignored, as the Ashbrook and Dornan amendments are being ignored right now.

Therefore, with full recognition of the good that this legislation could do, and with deepest appreciation for those who have worked tirelessly to enact it into law, my association respectfully declines to support its passage at this time.

However, we do not mean to impugn the motives of those who support this legislation, or even their judgment.

It is just merely in our judgment, the bureaucratic abuse that is an ongoing fact of life today might accelerate.

We have some problems that we must get worked out, and we would be happy to work with you any way we can.

Senator PACKWOOD. Let me ask you a quick question.

Mr. CLAYTON. Yes.

Senator PACKWOOD. If tuition tax credits were passed, do you think the temptation to the parents of the students in your schools' would be so great to take it that there would be no way you could say don't touch the Federal Government, don't take the credit?

Mr. CLAYTON. I think you are right, Senator.

Senator PACKWOOD. Rabbi.

**STATEMENT OF RABBI BERNARD GOLDENBERG, NATIONAL DIRECTOR, NATIONAL SOCIETY OF HEBREW DAY SCHOOLS, NEW YORK, N.Y.**

Rabbi GOLDENBERG. Thank you, Mr. Chairman.

My name is Rabbi Bernard Goldenberg. I represent the National Society of Hebrew Day Schools, or as we call ourselves in Hebrew, Torah Umesorah.

We are the representative agency of the Hebrew day school system in America, which has more than 500 schools offering a combined educational program of Hebrew and general studies.

We are located in about 37 States. Our enrollment is pushing upward of some 95,000.

Senator Moynihan mentioned a little earlier in the day, that he read a tabloid newspaper in New York which indicated that one of our schools was established early in the 19th century. And he saw, there that both the city and the State gave some money, that early in American history.

Just for the sake of perspective, the first Hebrew day school was established during the colonial period, about 85 years before the Declaration of Independence was signed.

Now what is it we are trying to do in our schools? We want to provide intensive instruction in the area of secular or general studies, and we follow the curriculum of the local educational district.

We also want to provide intensive instruction in the field of religious education.

What else do we want? What else do we do with our children?

We provide them with a rich knowledge and fervent love of the American heritage, a firm sense of civic responsibility, and a commitment to the pursuit of academic excellence.

Side by side, with a high regard for ethics and adherence to our own principles for which I need not apologize.

Now, Senator Packwood, you spoke earlier today about private schools which are considered elitist schools and how do we pay for the education of our children in these schools?

Senator PACKWOOD. I didn't speak about them in the sense that they were. Others are making that charge.

Rabbi GOLDENBERG. That is the question you raised. Right. I realize that.

Well, only 10 percent of our students pay full tuition. About 20 percent of our students receive almost full scholarships. The vast majority receive partial tuition grants or tuition scholarships.

Many of our parents have limited income; they are in the lower-middle class. Since our parents consider both day school religious instruction and the finest possible program of secular instruction as equally vital for the children, those of our parents who are economically underprivileged and those who are the middle class are faced by the agonizing choice of failing to provide for the religious education of the children or being driven to desperate financial straits when they seek to send their children to Hebrew day school.

I think we can understand them much better if we concentrate on a single area. There are about 200 schools in the Metropolitan New York area where many of our schools are located.

Almost 120 of those schools are located in poverty areas.

I should mention that the structure that rears its head heavenward so to speak, is not the synagogue or the house of worship, but the educational building, the Hebrew day school.

Were it to happen that these parents in the poverty areas of New York would not be able to gain scholarships for the education of their children, the entire community will be threatened.

There will be a massive urban relocation, so to speak, and years of investment in the resources, perseverance and purpose will be crushed in record time.

About the graduates of our system, of our Hebrew day schools. Perhaps it should be mentioned that a very large number of people who have won renown in the professions, in academic and scientific endeavor, and in government service are graduates of our schools.

Let me just state one example, because I hate to deal with massive numbers. I would rather deal with single, individual things.

I have a relative, a graduate of one of our schools who is now conducting intensive research in the area of finding a cure for what we all know is so far incurable. Did anyone ever ask him, "Hey, where did you get your love of science, your biology—your love of humanity? Was it a public or nonpublic school?"

I happen to know that he went to a nonpublic school. I happen to know that my nephew went to a Hebrew day school. No one asked where he obtained his initial schooling of biology or his motivation to serve humanity.

We only ask that God speed his efforts.

If that is so, then the nonpublic schools serve the States' and society's purpose. They perform a public service. Is America richer or poorer because of these graduates? Is America richer or poorer because parents made the commitment to send their children to such schools?

I know there will be a flood of words, and I am adding my one 3½ minutes to it. But I think the essential question must be: Is America richer or poorer because of these graduates of these schools, who show, who give evidence of the love of humanity and the love of America?

Pluralism in education is the right to choose between educational alternatives without penalty.

If we attach a financial penalty to the exercise of one's conscience, it is an infringement of free exercise. And that is why we are strongly in favor of tuition tax credits.

I just want to make two more statements.

The nonpublic schools in America are an example of a system which is not the creature of the State.

The parent is indeed the primary educator of the child. And we stand by that statement. The parent is indeed the primary educator of the child.

We hear a great deal these days about the importance of getting the Government off our backs. That concept has now become creed, catechism, and concern.

Should we not then help the parent utilize this educational alternative through our tax credit. It is sound public policy to insist on some justice for all parents.

Mr. Chairman, in your State, there is a famous case of *Pierce v. Society of Sisters*. I recently studied some briefs on that case.

The late Louie Marshall, in the brief submitted as a friend of the court, had this to say:

This Nation is no more preserved by the public school than it is by other agencies. The Fathers of the Republic and a large proportion of our finer citizens never attended public schools. And today, a large number of the best examples of Americanism have received and are now receiving their education outside the public schools.

All we ask is give alternative to education a chance.

Thank you very much, Mr. Chairman.

Senator PACKWOOD. Rabbi, I want to answer your question about whether we are richer or poorer, with the private school system and diversity.

But I will tell you this, we are safer. And that our civil liberties are better protected by a decent respect for diversity than they are by some kind of compelled conformity.

All we need is to have a uniform system, and one day a person will come along to run that uniform system. And that person may be fine, and that person may not be fine.

But the danger is in the centralism.

Rabbi GOLDENBERG. I fully agree with you.

Just looking for the financial sinews so that more people can use that choice in America.

Senator PACKWOOD. Mr. Billings.

**STATEMENT OF WILLIAM BILLINGS, EXECUTIVE DIRECTOR,  
NATIONAL CHRISTIAN ACTION COALITION, WASHINGTON, D.C.**

Mr. BILLINGS. Mr. Chairman, I come in three roles I suppose, today. I am a parent of two children in private schools.

I have also served as principal of a Christian school, one of them in Mr. Matsunaga's home State of Hawaii.

I also represent an organization called the National Christian Action Coalition, that has for a long time taken an interest in this legislation.

I am going to abbreviate my testimony and just single out two points.

One is point three on the written testimony that this tuition tax credit should in no way be considered as assistance to the nonpublic schools. I believe it is, in the bill it is the wording of the Archer amendment. And we wholeheartedly support that and hope there are no changes in that.

We are opposed to Federal assistance of nonpublic schools in whatever form. And we are supportive of this bill only as long as it remains a tax relief measure for parents.

Second, I just want to add an Amen to Attorney Ball's statement yesterday. And we, too, have a few problems in regard to the bill on the clauses that refer to discrimination.

We are unalterably opposed to discrimination. We are unalterably opposed to segregation. And yet, we feel like the proper agency to handle any type of problems in this area would be the Justice Department, and not the Internal Revenue Service.

Thank you.

Senator PACKWOOD. We will conclude with Dr. Ruiter. Do I pronounce it right?



**STATEMENT OF DR. MICHAEL T. RUITER, EXECUTIVE DIRECTOR, CHRISTIAN SCHOOLS INTERNATIONAL, GRAND RAPIDS, MICH.**

Dr. RUITER. Thank you.

Chairman Packwood, thank you for this opportunity to be the final speaker before we break for lunch.

I am Michael Ruiter, executive director of Christian Schools International, which is a service organization for Christian schools in the United States and Canada.

I would like to briefly address myself, in particular to three aspects of the proposed tax credit bill. I will speak to the need for the bill, the principles which support this legislation, and the benefit that such legislation will have for our Nation's schools and our country.

My office is in Grand Rapids, Mich. We have Oakdale Christian School in the inner city of Grand Rapids.

Oakdale Christian School is a school of the Grand Rapids Christian School Association. The cost of educating a child at Oakdale next year will be \$1,700. The Oakdale parents, black and white, want to provide an education for more neighborhood children.

In spite of the huge financial burden on these parents, they have a scholarship fund which raises \$50,000 a year to provide scholarships for neighborhood children.

These people work hard to raise funds for these scholarships but cannot raise nearly enough to provide scholarships to all who would like to use Oakdale School for their children.

Some poor families cannot exercise their choice to send their children to Oakdale School. It is just economically impossible to provide for them.

Legislation like S. 550 would enable the people at Oakdale Christian School to provide for more neighborhood children that now find a Christian education out of their financial reach.

The Oakdale constituency have always shared with others to the limit of their financial ability. Financial relief through tax credit will enable them to share more fully with those who they have been unable to reach.

Incidentally, the Oakdale School is a very old building and badly in need of replacement. Rather than move out of the inner city, the Grand Rapids Christian School Association has recently committed itself to rebuilding the Oakdale School on its present site.

I use Oakdale Christian School merely as an illustration of what is being and can be done for those who are economically deprived. This commitment to serve others is no stranger to the Christian school communities.

Tuition tax credits will not only help those who can help themselves; they will also help those who need the help of others.

In addition to the practical benefit of tuition tax credits there is a basic principle of justice that is addressed by this legislation. The principle upon which our Nation is established makes no second-class citizen of those who exercise a different belief or exercise a different choice.

These principles of individual selection and action were ingrained in the thinking of our Nation's forefathers but somehow in education we have failed to carry them out.

Instead we have developed an elitist group of citizens; a group of people who take everyone's tax dollars to support the schools they choose but oppose the access to tax dollars of others who out of conviction choose a different means for their children's education.

All of the rationalization about what tax credits may or may not do to public schools is not really relevant to the issue. What is relevant is the answer to this question: Who owns the public funds used to support education?

It's not a matter of whether public school patrons favor the expenditure of public funds for nonpublic schools; rather it's a matter of justice, a simple justice, long recognized in almost every other free country in the world.

That principle of simple justice is that all citizens own public funds and all citizens should have equal use of these funds.

In spite—

Senator PACKWOOD. Let me ask you this, because I will put your entire statement in the record.

Could you summarize?

Dr. RUITER. Yes, sir.

Senator PACKWOOD. Thank you.

Dr. RUITER. I believe, in brief, I'd like to state this: tax benefits should be shared by all citizens who exercise recognized legal options in providing for the education of their children. No legal educational option should have an exclusive tax monopoly, nor have a prohibition of tax benefit.

Principle is one thing, but the Nation's well-being is another. And I think that the cry we hear from opponents of this bill is simply a cry that cannot be affirmed or established in fact.

Is that wolf that we hear at the door a wolf, or is it merely a wolf-shaped bush? A mirage?

In my opinion, it is a mirage.

Tax credits, in summary, will surely help public education as much or more than they will help private education.

Of that, I am absolutely sure. In fact, the educational publications of our Nation, which you are currently reading, are already alive with the thoughts of public school leaders regarding the challenge that private schools are providing those in public schools.

Are private schools doing a better job? Are they less segregated? Are they appealing to the rich, the poor, the minorities?

The public schools are finally asking themselves these and other similar questions. These questions are giving birth to a re-examination which will surely help lead to improvements in public schools as well.

So, in summary sir, I would like to say this: that I believe it is a matter of justice, it is a matter of equity, it is a matter which because of competition is going to improve the quality of instruction, not only in the private schools, but in public schools as well.

I am sorry I ran beyond my time limit, and I thank you for the courtesy which you afforded me while making this testimony.

Senator PACKWOOD. After the patience all of you have shown this morning, in waiting this long, don't apologize.

I want to ask each of you one question.

The argument is raised, and you can take it from the background of your individual school experience—the argument is raised, that

if we pass tuition tax credits, it's not going to do parents any good. You are just going to go ahead and raise the fees.

Mr. Billings.

Mr. BILLINGS. As a principal in a school, we kept our fees at the absolute minimum that we could. We also provided, as many Hebrew day schools do, I am sure, free tuition for those students who couldn't afford it.

We would only raise the tuition if it were absolutely necessary in terms of paying teacher's salaries as the rate of inflation goes up. I would not think there would be any schools that would raise it simply because they would see it as an opportunity of making more money.

Senator PACKWOOD. Mr. Clayton.

Mr. CLAYTON. I can't see how it would affect the tuition at all because we want to keep it as low as possible because even when there is any increase, it causes additional hardship for people who send their children to our school.

Senator PACKWOOD. Rabbi Goldenberg.

Rabbi GOLDENBERG. We are looking for tuition tax credits to help those people who are not in the schools, who may have to take the children out of the school.

We do not see raising tuition because of tax credit. If tuition is raised, it will be because of inflationary pressures, completely apart of tuition tax credits.

Senator PACKWOOD. Dr. Ruiter.

Dr. RUITER. Mr. Chairman, Calvinists are frugal, they are accountable, they are responsible people. In no way would this in any way effect what they do with the money to educate their children.

Senator PACKWOOD. Gentlemen, thank you very much.

The hearing will adjourn until 2.

[Whereupon, at 12:56 p.m., the hearing recessed, to reconvene at 2 p.m. the same day.]

[The prepared statements of the preceding panel follow:]



# American Association of Christian Schools

Dr. A. C. Jaaney  
President

Dr. A. Q. Weniger, Jr.  
Executive  
Vice President

Rev. G. B. Carlson  
Field  
Director

Rev. James Munro  
Educational  
Consultant

Mr. Jack Clayton  
Washington  
Representative

SUMMARY OF THE TESTIMONY OF JACK CLAYTON  
BEFORE THE  
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT  
OF THE  
SENATE FINANCE COMMITTEE  
JUNE 4, 1981

1. Member schools in my association oppose both federal financial assistance and federal controls.
2. Tuition tax credits are a fair and equitable way to provide tax relief to families.
3. The historic position of our churches opposing government financing of religious bodies is not changed when parents are allowed tax relief for educational expenses of their children.
4. The government support for humanistic education has enormous religious implications, but this has not been protested by opponents of tuition tax credits. The government policy is not religiously neutral.
5. Some tuition tax credits already exist.
6. Continued bureaucratic abuse and hostility to Christian schools by the Internal Revenue Service cause grave threats to religious liberty.
7. The federal judiciary and agencies such as the Internal Revenue Service have simply ignored legislative safeguards for religious freedom in the past. A shocking attitude of lawlessness prevails, and Congress must act firmly to halt it.
8. Despite the enormous good that tuition tax credits could do, recent history of unelected members of government abusing the rights of Christians cause legitimate concerns. The American Association of Christian Schools respectfully declines to support the legislation at this time.
9. The danger of federalization of all education grows as selfish interest groups exploit problems to enhance their own power. Congress should reverse this trend.

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My name is Jack Clayton. I am Washington Representative for the American Association of Christian Schools. I deeply appreciate the opportunity to testify before this subcommittee today.

There is one consistent principle that churches and their schools who support our association maintain concerning relations with civil government. They do not accept government financial assistance, and they oppose government controls of their school ministries.

The subject of tuition tax credits has received the most careful consideration by our association. We commend those members of Congress who have attempted to develop legislation that provides fair and equitable tax relief to parents who choose a different education for their children than the one provided by government agencies.

The inequities in the present tax structure are strikingly illustrated by neighboring Fairfax County, Virginia where a staggering \$2,833 per child is spent by the school system. A family with \$20,000 of taxable income is allowed only a \$240 reduction in federal taxes when they have one child. This \$240 is a mere pittance for parents who must feed, clothe and educate the child, and provide for countless other needs.

This family is surrounded by lavishly funded government programs of every sort. It is not unjustified for such a family to feel a sense of family deprivation while among such governmental opulence.

In determining whether or not to support passage of tuition tax credit legislation, a review of some of our historic concerns about church-state relations and events of very recent history point to our position.

Absence of state control of religion is an extreme rarity in history. It is especially regrettable therefore, that the secular history as taught today excludes the contributions to religious liberty by men who paid a dear price for our First Amendment freedoms.

In Alexandria, Virginia, for example, the Baptist preacher Jeremiah Moore was jailed for preaching and teaching without a license. Moore was defended by attorney Patrick Henry who also defended many other Baptist preachers who suffered beatings and jailings for the same offense. Over two hundred years later we are again faced with the problem of state licensure of religious ministries.

After many untold jailings and beatings, the early Baptists finally earned protection for religious liberty. No sooner was it won than they had to face the question of government financing of religious education.

In 1784 a bill was introduced in Virginia to provide a general assessment for the teaching of religion in which citizens could either declare the denomination to receive their assessment, or if no declaration was made, the money would be used to support schools in the county where they lived. George Washington and even Patrick Henry supported the idea, but James Madison, Thomas Jefferson and the Baptists opposed it. It was narrowly defeated.

The defeat of direct governmental financing of religious institutions became a basic concept of the American system. Thomas Jefferson requested that his tombstone include his recognition as author of the Statute of Virginia for Religious Freedom. Yet, historian William W. Sweet maintained that greater credit was due elsewhere when he wrote:

But justice compels the admission that Jefferson's part in this accomplishment was not so great as that of James Madison, nor were the contributions of either or both as important as was that of the humble people called Baptists.

Other fundamentalists have also come to share and defend this heritage.

We have examined the arguments of those who argue that any proposal for tuition tax credits would violate the constitutional requirements for separation of church and state, and we find them to be fallacious. Far different from direct government payments to religious institutions, tax relief to parents does not require any governmental entanglement or any action that either favors or opposes a particular religion.

If the truth is to be recorded about government-financed programs that advance or oppose particular religious beliefs, the record will clearly show an animated governmental hostility toward traditional moral beliefs in general and Biblical Christianity in particular.

What hypocrisy has led to the mandatory establishment of the religious worldview which forbids the mere posting of the Ten Commandments in Kentucky schools? The hypocrisy is particularly evident in another federal case Parducci v. Rutland which required a school system to allow assignment of Kurt Vonngut's Welcome to the Monkey House. The story is replete with four-letter obscenities and vulgar terms for fornication, urination and sex organs. Mandatory taxes supported this governmentally supervised bigotry which included crude satire on what the story called "fit things for a Christian family to see."

There is no governmental neutrality in such a policy. It is also widespread, and it is the rule, not the exception. Christian parents must pay taxes to directly finance coed dorms where illicit drugs and sexual immorality openly abound. Disgraceful sex education programs have contributed to an enormous increase in illegitimacy, venereal disease and suicide. Christian values are not only excluded, they are openly attacked.

Perhaps the best example of government financing of anti-Christian values has been the rise of the "values education" movement. Consider the Public Education Religious Studies Center PERSC at Wright State University in Dayton, Ohio. PERSC states that it aims to promote "teaching about religion" and to foster "teaching of Values Education in Elementary, Secondary and Higher Education." While most Americans would agree that they want values taught to their children, there is very little understanding of what is meant by the term "values" as it is used in contemporary education.

PERSC promotes "values education" similar to the kind taught across the nation by Professor Sidney B. Simon of the Center for Humanistic Education at the University of Massachusetts. Simon teaches that any

values are acceptable if they are (1) freely chosen (2) happily affirmed and (3) acted upon. The values of Charles Manson and most of the great murderers of history would meet this test.

What is more important is the fact that such teaching demands a particular set of religious beliefs. It is not religiously neutral. It strongly argues against the teachings of Christians or Jews who believe that there are divine truths in values such as:

Thou shalt not kill, or Thou shalt not steal.

Values education cannot affirm such teachings because it is too morally bankrupt to proclaim universal truths. Nevertheless, it fosters a thoroughly religious worldview; its religious implications are just as significant as that of any church. The tenets are boldly set forth in Humanist Manifesto II where it is stated that, "Moral values derive their source from human experience. Ethics is autonomous and situational, needing no theological or ideological sanction." Man becomes his own god.

Again, this teaching is not neutral. It constitutes the establishment of a state religion. It might as well be called a state-financed humanistic "church." There is nothing in our constitutional history to suggest that such a religious worldview should be enshrined, financed and given preferred state status, while Christianity is systematically excluded. We protest the taxation of Christians to finance anti-Christian immorality.

The opponents of tuition tax credits who maintain that their position is demanded by constitutional requirements for separation of church and state have not made any protest of the massive direct government financing of humanistic education. Their arguments are not valid, not because of this inconsistency, but because of the nature of our tax structure.

Deductions and exemptions on tax returns are allowed for a very wide variety of expenses in our personal lives. The basis for them varies from blindness to interest expense, and from taxes to highly questionable forms of entertainment. Governmental decisions to allow these provisions are matters of public policy, and they pose no constitutional problems if they are made equally available to all citizens.

Even tuition tax credits are already a fact of life. Deductions are now permitted for day care expenses and for educational expenses necessary for an individual to keep his present job. These provisions have produced no constitutional challenges from opponents of tuition tax credits.

In determining whether to support tuition tax credits, my association had to look at the realities of recent history of government relations with religious institutions. It is not a happy chapter in American history.

We reviewed the attempts by the old Department of Health, Education and Welfare to impose Title IX regulations on small colleges simply because students there received government loans. These regulations prohibited school rules against abortion, pregnancy outside of marriage, and even the inquiry about marital status. Such efforts have only recently been halted, but future threats remain.

We reread the assurances that federal aid would not lead to federal control of education, and how it led to massive destructive federal controls. This caused chaos, breakdown of school discipline, immorality, drugs, declining academic standards, abolition of dress rules, and spectacles such as unmarried pregnant girls in coed basketball games. The list is endless.

We have read the U.S. Commission on Civil Rights recommendations that these Title IX rules be issued to all tax-exempt schools, and that church schools be treated the same as all other schools.

We continue to look at how the Internal Revenue Service has continued its fanatical attack on Christian schools despite the fact that there is not one single sentence of statutory authority for their actions. We are astonished that the agency has disregarded the Ashbrook and Dornan Amendments which prohibited funds for its harassment of Christian schools. We are dismayed that the Justice Department has not taken disciplinary action against the attorneys from its Tax Divisions and Civil Rights Division who either participated in the "sweetheart suit" which led to the present crisis, or otherwise participated in illegal and unethical secret negotiations in the cases of Green v. Blumenthal and Wright v. Blumenthal. We see the major confrontation which the IRS has provoked between Congress and the federal judiciary over this matter.

We note the continued refusal of the IRS even to answer letters from members of Congress concerning its policies which caused this problem. The real world in which our schools must operate is a world where government officials develop endless regulations out of thin air without a shred of statutory authority. It is a world where innocent schools in Pennsylvania and Maine are subjected to harassment about racial policies, when not one act of discrimination has occurred.

It is a real world of unelected bureaucrats and unelected judges with which we must contend. This discussion has not dealt with the specific language of the proposed legislation. We feel that acceptable language can be, and possibly has been found.

It is sad to state that the language of the proposed legislation is almost irrelevant. Yet, that is not our position, it is the position of the bureaucracy and the judiciary. Regardless of whatever reasonable restrictions that Congress might pass, the branches of government with which we must deal have shown that they will defy them. If recent history has taught anything to anyone who cares to look, it is that abuse of power occurs whenever there is power to abuse.

This abuse is not some falsely imagined distant possibility. It is happening now. It is occurring today.

If tuition tax credit legislation is enacted at this point in history, we fear that agencies will formulate a long list of directives, procedures, guidelines and rulings. Court action would be certain, and federal courts increasingly show contempt for Congressional restrictions. Legislative safeguards might simply be ignored.

Therefore, with full recognition of the good that this legislation could do, and with deepest appreciation for those who have worked



tirelessly to enact it into law, my association respectfully declines to support its passage at this time.

As early as 1945 a report of the American Council on Education and the National Education Association stated with remarkable candor the aims for federal control of education and means which would cause it to come.

. . . a continuance of recent and current trends in federal-state relations in education will, within a measurable time transfer predominant responsibility for control of education in the United States from the states and localities to the national government. Already we have traveled farther along this road than is generally realized.

The report admitted that the reason for this trend was not popular demand.

If education becomes federalized in the United States it will not be because the people want this to happen. . . . Rather, national control of schools will come by a process of accretion and infiltration. This is how it has happened thus far. It will come, not because the people approve a policy of gradually shifting predominant control from the states and localities to the nation. Rather it will result from responses to many small pressures and from pressure of many special interests.

These emergencies and pressures are often contrived, exacerbated and manipulated by the very people who pretend to want to solve the problems. By skillful exploitation of these problems, they enhance the power of the federal government, and more than coincidentally, their own.

Such people trample on everyone's freedom, and we appeal to Congress to stop them.

SUMMARY OF THE WRITTEN STATEMENT

Submitted by Rabbi Bernard Goldenberg, National Director, (Torah Umesorah),  
National Society for Hebrew Day Schools, Before the United States Senate  
Committee on Finance, Subcommittee on Taxation and Debt Management.

June 4, 1981

1. There are today some 480 Hebrew Day Schools in the United States offering a combined program of Hebrew and General Studies for some 90,000 students. We pursue excellence in education, love of the American heritage, high regard for ethical norms and loyalty to the Jewish religious tradition.
2. Graduates of Hebrew Day Schools who have won renown in the professions, in public service and in scientific endeavor serve the public good. Yet, no one questions whether the skill was developed in the public or non-public school or whether the motivation to serve humanity or America was forged in a public or non-public school.
3. Our tuition fees cover only 40 -50% of our budgets. The 10% of our student population who are among the the rich can afford full tuition. Some 10 - 20% of the poor and disadvantaged of our student body receive scholarships. The middle class is caught in a tight financial vise. Without scholarships - frequently the disadvantaged and middle class parent, the mainstay of our schools - loses the option of educational choice.
4. Our schools provide quality education and this is of substantial value to American society and the public good. To the extent that tuition tax credit will in some small measure help middle class parents weather the financial strain it will in turn contribute to American Society and public good.
5. Tuition Tax Relief is constitutionally valid and requires no religious means test. It will also help maintain institutions which give parents some choice in the education of their children. Thus, when educational alternatives thru tax relief for the working class and the middle class are preserved, the nation is preserved. We can't ask for more.

Torah  
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National  
Society for  
Hebrew  
Day Schools

STATEMENT

OF

RABBI BERNARD GOLDENBERG

NATIONAL DIRECTOR

TORAH UMSORAH, NATIONAL SOCIETY FOR HEBREW DAY SCHOOLS

BEFORE THE

UNITED STATES SENATE

COMMITTEE ON FINANCE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT GENERALLY

JUNE 4, 1981

תורה ומסורה

MR. CHAIRMAN AND MEMBERS OF THE SENATE:

I have the honor to represent the National Society for Hebrew Day Schools - Torah Umesorah.

Our organization was founded in 1944, in order to foster the growth of Hebrew Day Schools in America offering a combined educational program of Hebrew and General Studies. At present, there are nearly 500 Hebrew Day Schools in the United States of which some 300-odd are elementary, while 150 are secondary schools. These schools are located in 170 cities in 37 states from coast to coast. The aggregate enrollment of these schools is about 90,000

Our organization which was directly instrumental in founding most of these schools supplies all the necessary supportive services to the schools in the Hebrew Day School movement. Our national body is acknowledged to be the representative agency of the Hebrew Day School in America and we ought to bear in mind as a sort of perspective that the first Hebrew Day School was started during the Colonial period.

The Hebrew Day School has the objective of providing intensive instruction in both the area of secular, general education and that of religious education, and it seeks to accomplish both on highly exacting levels. It strives to inculcate in its pupils a rich knowledge and fervent love of their American heritage, a firm sense of civic responsibility and an enduring commitment to the pursuit of academic excellence in the sciences and the humanities, side by side with a high regard for ethical norms and abiding loyalty to the principles and precepts of the Jewish religious tradition.

The Hebrew Day Schools are maintained financially in part by payment of tuition fees and in part by voluntary contributions made by individuals and groups. On the average, approximately 40% of the budgets are covered by tuition. In the larger metropolitan communities, where the majority of our schools are found, a large percentage of the parents have very limited economic earnings, which makes them dependent on tuition grants should they wish to

- 2 -

enroll their children in a Hebrew Day School. Since Day School parents consider both Day School religious instruction and the finest possible program of secular instruction as equally vital for their children, the economically underprivileged along with the middle class among them are faced by the agonizing choice of either failing to provide adequately for the religious education of their children, or of being driven into desperate financial straits when they seek to send their children to Hebrew Day Schools - whose standards are themselves jeopardized by inability to meet the constantly rising budgetary requirements imposed by the needs of our time.

Perhaps by concentrating our attention on a single area we can gain a better insight into the plight of the poor parents in the larger metropolitan areas along with the middle class who have chosen a nonpublic school for the public education of their children. In New York City nearly 120 of the 181 schools in this major city are located in poverty areas. With the educational institution such as the Hebrew Day School being the pivotal institution in the structure of the Jewish community - should it happen that Hebrew Day Schools in such areas will no longer be able to provide scholarships for the children of the poor and the middle class - the whole community will then be threatened. In the wake of this you have an accelerated flight from the city, a further emptying of the inner city. And all because of a lack of freedom of choice in education. Thus, years of investment of resources, will, perseverance and purpose will be crushed in record time.

With reference to the achievements of the Day Schools, the scholastic standards maintained by these schools throughout the country and the subsequent record of academic achievement of their graduates has been exemplary. Amongst the graduates of Hebrew Day Schools, perhaps it should be mentioned, there are an impressive number of personalities who have won national and international renown in the professions, in academic and scientific endeavor, in the judiciary and in government service.

With reference to the General Studies Departments of the Day Schools, it should be noted that their curriculum is patterned after the course of study of the public schools, with much help and cooperation extended by local superintendents of schools. The teaching personnel in the General Studies Departments are often themselves public school teachers, and are of widely varying religious backgrounds.

As parents, as Jews and as educators, deeply devoted to educational excellence - we, therefore, feel that a rethinking on the problem of the survival of the non public school - is long overdue. How can we deny millions of children attending nonpublic schools responsible educational opportunities?

Let us state but one example. A research fellow at a university turning his nights into days so that we - all of us - can be cured of what is incurable - is not asked whether he obtained his initial school in biology or his motivation to serve humanity in a non public school or public school. We ask only that G-d speed his efforts.

The nonpublic schools then served the state's and society's purpose. Let us ask ourselves, is America richer or poorer because of these young men and women who have received their education in nonpublic schools?

Let me also discuss another basic facet of democracy. Pluralism in education is the right to choose between educational alternatives without penalty. A financial penalty attached to the exercise of one's conscience is an infringement of free exercise. There is no freedom of choice in education if parents have to pay substantial costs for educating their children, while free schools ~~beckon~~ beckon them.

That is why we are so strongly in favor of tax credit legislation. Inflation, galloping costs are wreaking havoc. The middle income group, too, is becoming disenfranchised. Through tax credits some relief will be provided, constitutional purity is not invaded, and some viable options still maintained.

It is a matter of incalculable importance that educational alternatives be preserved. Intellectual totalitarianism is not the fruit of the Founding Fathers seed. And the disappearance of educational alternatives is not the intent of the Founding Fathers Constitutional strictures.

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The nonpublic schools are an outstanding example of a system which is not the creature of the State. In the United States the parent is, indeed, the primary educator of the child. We hear a great deal about the importance of getting the government off our backs. This concept has now become creed, catechism and concern. Should we not then help the parent utilize this educational alternative through tax credits? It is sound public policy to insist on some justice for all parents and that all parents of school children participate fully in America's concern for the education of its young. It is not the creed of the child that concerns us in Washington today but the need of the child.

The public school is a great American institution. It is great enough to allow assistance to an optional system in which parents are choosing to educate their children according to their conscience.

Values education is increasingly a concern in our society. Increasing numbers of Americans recognize that we are facing a serious crisis in our civilization because of the weakening of the values which are the basis of our common life. Because of this, the American people should be called upon to support all institutions which are dedicated to the strengthening of the moral and ethical base of our culture.

The late Louis Marshall, in a brief amicus curiae in that very famous court case of *Pierce vs. Society of Sisters* has this to say: "The nation is no more preserved by the public school than it is by the other agencies. The Fathers of the Republic and a large proportion of our finest citizens never attended a public school, and today a large number of the best exemplars of Americanism have received and are receiving their education outside of public schools."

Mr. Chairman, our thanks for this opportunity to share our thoughts with you.

TESTIMONY OF WILLIAM BILLINGS  
Executive Director  
National Christian Action Coalition

1. Because parents who choose private schools reduce the financial burden of the state in providing public education, the granting of a tax credit for a percentage of tuition paid is a fair and equitable idea.

My children have never attended public school. I have three children, ages 3, 5 and 7. I have chosen a Christian school for my children because I want them to learn the "beginning of wisdom," which is the fear of God. This year, I have paid Immanuel Baptist School in Springfield, Virginia, more than \$2000. It was money well spent, and even without a tax credit I would select a Christian school. However, I've also saved the Fairfax County school system the cost of educating my children. I've not seen the recent figures, but I'm sure the county spends more than \$1000 per pupil.

2. Tuition tax credits would provide an opportunity for middle and low income families to choose private education for their children.

I have a good job. I can afford, with some little sacrifice, private school tuition. However, there are many parents who would like to enroll their children in Christian schools who cannot because the financial burden is too great. They, too, should have the opportunity and freedom of choice that I have. A tax credit for tuition paid to private schools would go a long way in giving them this opportunity. Some have said that a tuition tax credit would benefit only the wealthy. That's simply not true. A \$250 credit means little in the pocket of a family earning \$50,000 or more a year. But it means a lot when it represents a week's salary. Because education of children is primarily the responsibility of parents, how can we refuse to give parents the choice of the school their children attend?

3. The tuition tax credit should be viewed only as tax relief to parents, not as federal subsidy of non-public schools.

Some opponents of tuition tax credits have made the charge that the credit in some way subsidizes private schools. It does so no more than a credit for home insulation subsidizes the insulation business. It is in the public interest to have people insulate their homes. It saves energy. It is in the public interest to have people enroll their children in non-public schools. It saves tax dollars.



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The credit appears on the tax form filed by the parent. As I understand the proposed legislation, no money goes directly to the school. That is how it should be. I am opposed to federal subsidy of non-public schools-- they then would cease to be non-public. But I am in favor of tax relief in whatever form.

4. The tax credit should in no way open the door to the Department of Education to attempt to impose the failed policies of the public schools on non-public schools.

The public school system in America has failed our children. We're graduating students who cannot read, write or add. I had to purchase some boxes Tuesday for moving our office. I went to a store in Northeast D.C. I spent a full hour getting the boxes because the clerk could not multiply fifteen times 90¢-- even though he had a calculator beside the cash register. He kept coming up with a figure of \$135 and I continued to refuse to pay. I asked him if he had the opportunity of finishing high school. He graduated in 1978.

In my opinion, the public high schools of America have spent too much time and too much energy emphasizing the "minors" and they've cheated their students out of a good education. In many states, students must take only one year of high school math-- and yet they're expected to be able to plan their family budget and understand compounded interest rates. We want our students to be good citizens, but only require one year of history. Many graduates can't even read the paper to see if they should vote for you or your opponent.

I hope that when tuition tax credits become a reality, the federal department of education does not attempt to regulate the non-public schools. I hope they do not attempt to make the non-public schools adopt their policies. I hope there is no effort to require that schools be accredited before parents may take advantage of a tax credit. George Brett, a baseball hero of mine, would not think of seeking accreditation for the Little League. The record of most non-public schools is excellent. For them to seek accreditation from a school system that has failed would be ludicrous.

I would like to address one additional point. Some have argued that parents should pay taxes to support public schools even though their children do not attend those schools because education is in the public interest. I want to make it clear that education is in the public interest-- be it by non-public schools, parent, church or public schools. Education is the public interest, not necessarily public education.

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Testimony on Tuition Tax Credit before the Finance  
Subcommittee on Taxation and Debt Management

I am Michael T. Ruiter, Executive Director of Christian Schools International.

I will briefly address myself to three aspects of the proposed Tax Credit Bill S550. I will speak to the need for such a bill, the principles which support this legislation, and the benefit that such legislation will have for our nation's schools and our country.

My office is in Grand Rapids, Michigan. We have Oakdale Christian School in the inner city of Grand Rapids. Oakdale Christian School is a school of the Grand Rapids Christian School Association. The cost of educating a child at Oakdale next year will be \$1700. The Oakdale parents, black and white, want to provide an education for more neighborhood children. In spite of the huge financial burden on these parents, they have a scholarship fund which raises \$50,000 a year to provide scholarships for neighborhood children. These people work hard to raise funds for these scholarships but cannot raise nearly enough to provide scholarships to all who would like to use Oakdale School for their children. Some poor families cannot exercise their choice to send their children to Oakdale School. It is just economically impossible to provide for them. Legislation like S550 would enable the people at Oakdale Christian School to provide for more neighborhood children that now find a Christian education out of their financial reach. The Oakdale constituency have always shared with others to the limit of their financial ability. Financial relief through tax credit will enable them to share more fully with those who they have been unable to reach.

Incidentally, the Oakdale School is a very old building and badly in need of replacement. Rather than move out of the inner city, the Grand Rapids Christian School Association has recently committed itself to rebuilding the Oakdale School on its present site.

I use Oakdale Christian School merely as an illustration of what is being and can be done for those who are economically deprived. This commitment to serve others is no stranger to the Christian school communities. Tuition Tax Credits will not only help those who can help themselves; they will also help those who need the help of others.

In addition to the practical benefit of Tuition Tax Credits there is a basic principle of justice that is addressed by this legislation. The principles upon which our nation is established makes no second class citizens of those who exercise a different belief or exercise a different choice. These principles of individual selection and action were ingrained in the thinking of our nations' forefathers but somehow in education we have failed to carry them out. Instead we have developed an elitist group of citizens; a group of people who take everyone's tax dollars to support the schools they choose but oppose the access to tax dollars of others who out of conviction choose a different means for their children's education.

All of the rationalization about what tax credits may or may not do to public schools is not really relevant to the issue. What is relevant is the answer to this question: Who owns the public funds used to support education? It's not a matter of whether public school patrons favor the expenditure of public funds for nonpublic schools; rather it's a matter of justice, a simple justice, long

recognized in almost every other free country in the world. That principle of simple justice is that all citizens own public funds and all citizens should have equal use of these funds.

In spite of the fact that public funds do not merely belong to public school families, and in spite of the fact that nongovernmental schools perform all the legal and governmental functions of public schools, there are those in public schools who get very possessive about "our" public schools and "our" tax dollars. In effect, they regard all who select nongovernmental schools for their children as having no say about, nor any right to, their own school tax dollars. If, indeed, the use of nongovernmental schools for our children is legal--and it is--and if, indeed, nongovernmental schools perform the legally compulsory educational requirements for our children--and they do--and if, indeed, tax moneys belong to private school patrons as much as they belong to users of public schools--and they do--then shouldn't private school parents have as much claim to use tax funds to educate their children according to their choice of school as does their public school neighbor?

In brief, the principle is this: Tax benefits should be shared by all citizens who exercise recognized legal options in providing for the education of their children. No legal educational option should have an exclusive tax monopoly nor have a prohibition of tax benefit.

Principle is one thing but the nation's well being is another. The cry is heard in these halls and in the streets of our nation that tax credits will doom public schools. Others go so far as to say that if public schools go our nation cannot long stand. Is that wolf at the door really a wolf or is it merely a wolf-shaped bush, a mirage? It is a mirage!

Tax credits will surely help public education as much or more than they will help private education. Of that I am absolutely sure. In fact, the educational publications of our nation are already alive with the thoughts of public school leaders regarding the challenge that private schools are providing those in public schools. Are private schools doing a better job? Are they less segregated? Are they appealing to the rich, the poor, the minorities? The public schools are finally asking themselves these and other similar questions. These questions are giving birth to a reexamination which will surely lead to improvements in public schools.

If the mere prospect of tax credit legislation can arouse the sleeping bear, it does not take much foresight to imagine what the real thing will foster. All of us at one time or another have witnessed the stimulating effect the new store in the neighborhood can have on the old standbys. So it will be in education. Tax credits will not diminish public school quality but rather will liven its resolve to serve the public better. Public schools will not be diminished by tax credits because most Americans still prefer public school education, private schools have very limited capacity, \$250 does not go very far in paying the \$1700 bill at schools like Oakdale Christian, and those who desire private schools and can afford them already use them.

Yes, tax credits are needed to open the educational option to those of lower incomes. They are needed as a matter of basic democratic principle and they are needed because they will benefit American education, both public and private. Tuition Tax Credits Credits are a preferred means of providing a tax cut to the most deserving citizens and to help American education at the same time.

Senator **PACKWOOD**. We will start this afternoon with a panel of Joan Reinthaler, Rabbi Chaim Keller, Wallie Simpson, and Abigail Wiebenson.

I am sorry. And Gail West, who was initially left off. I apologize. My mistake.

Does the panel have any preference in the order that they go, or do you want to go in the way that you are listed?

Well, why don't we start, then, with Joan Reinthaler. Did I pronounce that right?

Ms. **REINTHALER**. Yes; you did. Thank you.

Senator **PACKWOOD**. Thank you.

#### STATEMENT OF JOAN E. REINTHALER, THE SIDWELL FRIENDS SCHOOL, WASHINGTON, D.C.

Ms. **REINTHALER**. Thank you for allowing me to be here today, Mr. Chairman.

My name is Joan Reinthaler. I am a teacher, and except for a 7-month stint with the U.S. Department of Education, I have been teaching on the secondary level in independent schools since 1958.

Currently, I am the chairman of the Mathematics Department of Sidwell Friends School here in Washington.

I've been at Sidwell for 10 years.

Sidwell Friends is a Quaker school, with roughly 1,000 boys and girls in kindergarten through 12th grades.

Its student body, mostly non-Quaker, is drawn from the whole greater Washington metropolitan area, and represents a wide variety of backgrounds, cultures, and traditions.

Minority enrollment is close to 17 percent; 10 percent of the students receive financial aid. Some of the students have unusual intellectual, creative, or physical gifts, some have learning disabilities which throw roadblocks in the way of their academic progress, and some have significant physical disabilities.

It stated in the preface to the handbook for students, parents, and faculty, that—

Sidwell Friends School seeks to provide every student with the opportunity for full intellectual, personal, and social growth, and to inspire students with a sense of personal responsibility and social conscience.

Now this is a little like apple pie and motherhood. Every good school aspires to these goals as stated in one form or another.

At Sidwell, the key to their attainment is the individual attention possible in a school that is not tied to a larger bureaucracy, where the system can be flexible, and where it is possible to adjust programs and pace to the wide range of ability and maturity levels one finds in any group of young people.

Specifically, in academic areas, the schools provide advanced college level courses where there are students that are ready to take them, and special courses for students with learning disabilities in subject where this is necessary.

A variety of teaching styles and methods insures that the needs of each students will be met somewhere. And of course, there is constant one-on-one help available in every course.

Students tutor each other, and upper school students assist in programs for the middle and lower school from time to time.

In the more elusive areas, of personal and social growth, the school tries to guide and teach in much the same way that a healthy family does—by example, and by giving students a lot of rope and a chance to make mistakes and to learn from them.

This entails considerable patience, faith, and at times, disappointment and frustration. Children don't grow up in uniform, predictable patterns.

But ultimately, by graduation, most Sidwell students have absorbed the Quaker belief that underlies all the noise and energy of student life: that, "there is that of God in every person."

Most have come to a feeling of genuine respect for others, and for their differences. Most have come to value others for variety of talents, qualities, and virtues.

And most of them have developed into good and caring people.

The school can't take credit for all of this. But at least it has supported the direction of their growth.

Although Sidwell is not a neighborhood school, each of its students is, of course, a member of some neighborhood. And a number of these students, have, through the years, contributed significantly to their communities by doing volunteer work in a wide variety of areas, from tutoring in schools and supervising playground programs, to working in homes for the terminally ill.

Several years ago, the school Senate, an organization of students, faculty, and administrators, took up the philosophical issue of the school's relationship to the neighborhood in the context of the Quaker tradition of community responsibility.

The outcome of a lengthy and intense series of discussions was the recommendation that this active involvement of the students in the larger world be institutionalized, that the school should require significant community service for all of its students in their high school years, and this recommendation was accepted by the student body.

Currently, every student works for at least 30 hours in some area of community need, and many work in these jobs throughout a larger portion of their high school careers.

Sidwell is not a representative independent school. I don't think there is such a thing. For there are as many varieties of independent schools as there are independent schools themselves.

But it does provide one alternative. And it is in the richness of these alternatives, I believe, that the strength of education, public and private, lies.

Thank you.

Senator PACKWOOD. Rabbi Keller.

**STATEMENT OF RABBI CHAIM D. KELLER, ADMINISTRATOR, TELSHE YESHIVA AND CHAIRMAN, EDUCATIONAL COMMITTEE, BAIS YAAKOV ELEMENTARY SCHOOL, CHICAGO, ILL.**

Rabbi KELLER. Thank you, Mr. Packwood.

My name is Rabbi Chaim D. Keller. I am the Rosh Hayeshiva [the head] of Telshe Yeshiva in Chicago, which includes two main divisions: a rabbinical college and a high school preparatory academy.

Senator PACKWOOD. Is that preparatory for the college or preparatory generally?

**Rabbi KELLER. Both.**

The high school, of course, offers a full secular course of education as prescribed by the State of Illinois, which recognizes the school.

I am also the chairman of the board of education of Bais Yaakov Hebrew Day School in Chicago.

Since I wear these two hats, I am in a position to present testimony to this committee from the point of view of an individual who is on the firing line for the maintenance of excellence in the private sector of education from nursery through graduate school.

I would like to bring before this committee the plight of a group of Americans who are becoming increasingly hard strapped to make ends meet in the continuing struggle to keep the doors of those institutions of education open. To provide their children with that choice of education which is guaranteed to them by the U.S. Constitution.

In most cases, and I will speak to the point in facts and figures presently, this involves a tremendously heavy burden of tuition payments on top of the taxes that they are paying to support the public schools which do not benefit them at all.

As has been pointed out before in these hearings, this is not a Catholic issue. I would like to present this point from our point of view—the point of view of the Orthodox Jewish community with its very vital stake in its schools.

This is a very important point, which I don't believe has been brought out previously in the hearing. Our group, the Orthodox Jewish community, is a group for whom the choice in education is not a luxury.

For us, it is the very life principle of the continuity of our ethnic heritage. The Jewish people cannot exist without the study of the Torah. If our schools are forced, for whatever eventuality, to close, it is tantamount to writing off this ethnic and religious community.

So, therefore, it is really a guarantee of our first amendment rights in the free exercise of our religion to be able to keep our schools open.

One of the main points of the opponents of tuition tax credits, is the bugaboo of separation of church and state. Exactly what does the first amendment say on this point? It says, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

I don't believe there is any question of establishing a religion in supporting the secular studies in schools of all religions. But there is definitely a question of hampering, if not prohibiting, of course, "the free exercise thereof" in putting these schools in jeopardy.

There is a myth that the people that attend private schools, and of course Jews naturally, are all affluent and can all very well afford the tuition which is being charged in these schools.

Let me just give you some examples from these two schools which I am well acquainted with.

I am submitting some tables for the records. You will note that tuition for one child in the Bais Yaakov Elementary School is \$1,650 per annum. There are reductions for more than one child from a family.



But you must realize that in our group, many parents have three, four, and more children. A tuition bill of \$3,000 or \$4,000 is not unusual in our school system.

How many actually pay that full tuition bill? How many who are not really affluent can pay that?

The figures are such: In this one school, which is not atypical of a student body of 314, 113—a little more than one-third can afford full tuition. And I guarantee you, with our tuition committee, anybody who can afford it pays it.

There are 16 children, 5 percent of the total, who are on full scholarships—can't afford a penny. The rest, 185, or 60 percent of the total, are on partial scholarships.

On the college level, the figures are even more striking.

Senator PACKWOOD. Rabbi, I am going to have to ask you to abbreviate as best you can, or we won't get through all of the panels we have this afternoon. And all of your statements will be in the record.

Rabbi KELLER. OK.

I just want to say that on a college level, out of a student body in this case of 124, 7 pay full tuition.

Senator PACKWOOD. How many?

Rabbi KELLER. Seven.

Senator PACKWOOD. Seven?

Rabbi KELLER. Seven pay full tuition.

Senator PACKWOOD. Out of how many?

Rabbi KELLER. Out of 124.

The rest are on full or partial scholarships.

I believe that the time has long since past that the American public can turn a deaf ear to the plight of the private school sector, whose parents are not only supporting their schools with tuition, but are picking up the deficit.

You must realize that in the Jewish section there is no church that is the parent body. Our schools, I would say almost without exception, are parent-organized, parent-run, parent-directed schools. And if the parents don't pay tuition, they make it up in fundraising and contributions.

I hope that these remarks will put in proper perspective the plight of a very significant, although a very small, statistical minority.

I believe that it is a minority which has provided more than its share of leadership and leading citizens in this country. And our call for justice in relieving the burden of our parents, I feel, should be heard.

And we want to thank you and Senator Moynihan for the work that you have been doing in this area. And we hope that your efforts will meet with success.

Thank you.

Senator PACKWOOD. Thank you, Rabbi.

Wallie Simpson.

**STATEMENT OF WALLIE SIMPSON, FOUNDER, LOWER EAST SIDE INTERNATIONAL COMMUNITY SCHOOL INC., NEW YORK, N.Y.**

Ms. SIMPSON. Yes, Mr. Packwood, colleagues, and to those of you auditing this hearing.

I am very grateful to have this opportunity to participate in these hearings, to explore ways and means of sustaining and expanding the involvement of nonpublic schools in educating our children.

One of the main foci of the Constitution, and the Bill of Rights in particular, is the deference that it bestows upon the individual and the Government's responsibility to protect that individual's right to pursue happiness.

Through the years, the public school system became the vehicle to provide the tools to help that individual in his pursuit of happiness.

The public school system has not been able to maintain itself as a vehicle to fulfill dreams, hopes and aspirations, but rather has rendered a number of individuals worthless to themselves and to society.

For the urban centers, the public school system has become well known for its underachievement, violence, drug abuse, vandalism, truancy, sexual problems, and dropouts.

For the most part, we are witnessing the collapse of a public school system that has become a killer of dreams and an accomplice for broken promises.

The Lower East Side International Community Schools, of which I am the founder, was started because I, like many parents, wanted my children to begin school in a setting with the nurturing attributes of the traditional family, that is love, positive discipline, staff whose personalities exemplify the scriptural message of First Corinthians, chapter 13, plus an exciting, inspiring and challenging academic program.

The public schools do not fit this description. Our school became international because of its commitment to exercise flexibility in attuning its philosophy and curriculum to a world vastly reduced due to sophisticated communications system and supersonic transportation; thus, the child should learn early to appreciate differing cultures and to know that events in any one part of the world affects all human beings.

Another step that we have taken is, for lack of a better term at this point, we apply advanced skills in the cradle.

We feel that traditionally a lot of the curriculums have—certain phases of it have been delayed until the child is at a certain age before they introduce languages or science research, and other curriculum.

At the Lower East Side International School, we require the children, even at the age of four, to study two second languages, and they can handle this without confusion.

I would also like to say to you that our student population comes mostly from public schools. And it is composed of approximately 90 percent African-Americans and 15 percent Hispanics. Although we do have a nondiscriminatory policy.

I am also pleased to say to you that the school is completing its fifth year now. I am very happy to say that because we place an enormous amount of emphasis on value and quality, we have a waiting list now of people who are nonblacks and non-Hispanics.

About 98 percent of our students are reading on or above their grade level. About 20 percent of the students are reading from two to four grades above their grade level.

At least 95 percent of our students are presently one full level above their grade in mathematics.

All of our students receive a homework assignment at least 1 week in advance. These mimeographed assignments are designated for parents as well so that they are constantly aware of what studies are required of their children. Parents must sign the homework as evidence that they, the parents, are creating the proper atmosphere for study and making sure their children are studying.

Parents' role in the success of their children cannot be overemphasized in the initiative school years.

Communication between parents and schools must be constant. The parents must demand competency, high academic standards, order, and positive character support from schools.

And schools must demand from parents frequent visits, consistent love and emotional nurturing of their children, availability, overseer of discipline, good study habits, censors of television for their children, and provide spiritual guidance. Combined, the school and home prepares the child for the turbulent adolescent years.

Very quickly, I will summarize this. I won't go much over my time.

The academic performance of our students indicate that the tests we are presently administering will produce greater achievement than those just cited.

Another part we address ourselves to is, there is an added definition to successfully educating children. History has taught us that many people who have been labeled as point-blankly stupid, have ended up contributing greatly to uplifting the human condition.

Therefore, part of our success story, we say that another part defined in educating children—we must instill confidence, patience perseverance and hope.

The end must always be quality and value. Without value and quality, funds becomes meaningless.

Senator PACKWOOD. I have to ask you to wind up.

Ms. SIMPSON. Yes, sir. Ask me something quickly.

Senator PACKWOOD. Go ahead, you can finish. You can't finish your whole statement, but you can wind it up.

Ms. SIMPSON. OK, let me wind it up.

I strongly support the tuition tax credit recommendation as an incentive for parents who choose to send their children to non-public schools.

This recommendation hopefully will be the beginning of a competitive educational pluralism that will encourage the disestablishment of a public school system that has become a monopolistic enterprise whose cost escalate in direct proportion to its failure.

Further beyond that, because we came——

Senator PACKWOOD. You are coming close to the end.

Ms. SIMPSON. Yes, I am coming very close.

[Laughter.]

Ms. SIMPSON. But I want to say this. Because when we started——

Senator PACKWOOD. I can't imagine how you infuse any enthusiasm in your students.

[Laughter.]

Ms. SIMPSON. When we first started this school, the priority goal of the school was to provide an option for poor people. And so our tuition is extremely low to make it accessible to them.

Therefore, I feel that in addition to the tuition tax credit, that some of the other fantastic recommendations made by the President's Commission, as refunding or subsidizing people on a public assistance—

A lot of them simply don't have jobs. These people should have options, too. A part of the American dream which is very exciting, which has always existed is the fact that we face challenges, we explore things, we have our research labs, we have our space explorations.

So let us support this. Let us stop wasting minds and break the poverty cycle. Let us break that poverty cycle and give these people an opportunity to also have good options in education.

Thank you very much.

Senator PACKWOOD. Thank you, very much.

We will go on to Abigail Wiebenson. Do I pronounce that right?

STATEMENT OF ABIGAIL WIEBENSON, ASSISTANT HEAD,  
GEORGETOWN DAY SCHOOL, WASHINGTON, D.C.

Ms. WIEBENSON. Yes, thank you.

I would like you to know that while I am a product of independent schools and represent one here today, I am certified to teach in Massachusetts's public schools and have taught both in the San Mateo, Calif. public school district and here in the District of Columbia public school system. Our two school age children presently attend District of Columbia public schools.

I come to this panel as a representative of Georgetown Day School located on MacArthur Boulevard, in the District. We are an independent school serving approximately 750 students from pre-kindergarten through 12th grade.

My specific job as assistant head of the lower school is that of coordinating curriculum for the 250 prekindergarten through fourth graders.

Our student body has always very much reflected the racial and economic diversity characteristic of the District from which we get about 80 percent of our population.

Between 20 and 30 percent of the students are from the classification known as minority. In addition we have a number of children from foreign countries. While philosophically there are no full scholarships, every effort is made to give financial help to families who apply to the scholarship committee and who, without aid, would have difficulty in paying the tuition of between \$3,000 and \$4,000 depending on the grade level.

For most parents, the decision to send their children to Georgetown Day is a thoughtful choice. Many are true believers of the public schools who have become frustrated with their vicissitudes of which you and I read about too frequently in the newspapers and which hamstring both the honest efforts of potentially fine teachers and short change the curriculum.

Between 70 and 80 percent of our parents have husband and wife careers. They have to have a school they can depend on which can provide after school care for our younger children. We do.

Parents also enjoy the many opportunities to participate in school life individually going on field trips, and camping trips, helping our younger children with daily development projects and simply being welcomed at any time to observe the curriculum and discuss the progress and needs of their children.

Our curriculum is designed to embrace a fundamental, ultimately college preparatory body of knowledge. It is not, however packaged in a pour-it-down traditional vessel of learning.

In the lower school, for example, each classroom has two teachers-coteachers with generally 25 children. The schedule is arranged so that there are times during each day when half groups are at science or music or art so that there are a dozen children with two teachers in the classroom enabling a very personalized kind of instruction in language arts, social studies and mathematics.

It's an exciting curriculum which finds us making daily use of unique resources the metropolitan area offers to cement and make real classroom instruction.

For example the eighth grades use the silk screening staff and equipment of the Corcoran to extend our own print making facilities.

Fourth grades build on their knowledge of topographical map reading by using Prince William Forest's orienteering course; 120 students from the high school construct a 3-day model United Nations drawing heavily on the advice and knowledge of local embassy and agency personnel.

The fourth graders culminate their year long study of colonial literature and life with 3 days and 2 nights spent at Turkey Run Farm's environmental living center.

We are also close enough to other independent schools to have a lively, friendly physical educational competition.

Our curriculum intends to meet different styles and backgrounds. We have a support system to help remediate gaps in children who come to us after kindergarten or who simply learn at dramatically uneven rates.

We work hard at constructing curriculum activities which have an open-ended quality allowing each child to stretch and grow to the best of his ability. For instance, in studying Greek mythology in the fourth grade there is a selection of books spanning reading levels from third to ninth grade.

A large number of our students go entirely through Georgetown Day; its spiraling curriculum is designed also to build on a growing common frame of reference, yet does not penalize children who are admitted along the way.

A child may start French or Spanish for example at fifth grade, at seventh, and at ninth grade. It would be unfair not to mention what has come to be known as the hidden curriculum.

By this I refer to some of the underlying philosophies of the school—the things we value as an institution.

One of these is the importance of diversity as a positive force in our student population. Another is the fact that the arts are considered an integral part of the curriculum rather than frills.

We expect a high standard of personal and academic behavior from our students. We value initiative and the sense of responsibility that must be its complement.

Children are not to be patronized. Sex stereotyping is not tolerated.

We greatly value the pleasure of learning as well as the process of learning which is not always comfortable.

There are times when choices are appropriate and other times where compliance is the only choice. We want above all for our students to become informed, articulate, generous, and compassionate adults.

We expect them to become valuable and responsible contributors to a democratic society as well.

I hope that this brief description has given you a sense of Georgetown Day as a stimulating, diverse, dynamic, and rigorous environment in which to work and learn.

Only 10 minutes away, please feel free to visit us anytime during our academic year.

Thank you for allowing me to testify today.

Senator PACKWOOD. Thank you very much.

Gail West.

#### STATEMENT OF DR. GAIL WEST, SUPERINTENDENT OF EDUCATION, CATHOLIC DIOCESE OF ORLANDO, FLA.

Dr. WEST. Thank you, Mr. Packwood.

I am Dr. Gail West, superintendent of education for the Diocese of Orlando, Fla.

Prior to my job as superintendent, I was a professor in a college of education—a State university—training teachers and was a public school teacher myself. I would like to submit my full statement for the record and summarize it now.

These past few days, Members of both Houses of Congress have been meeting with the President in an attempt to work out compromise legislation for tax cuts. Senator Dole and others seem to be most interested in effecting tax relief especially for middle-income workers who make between \$20,000 and \$50,000 per year.

In concert with these efforts are those Congressmen who deem it appropriate to give some tax relief to those individuals and families who must pay tuition to obtain the education that best serves their needs and aspirations.

Several members of this committee are among the cosponsors of Senate bill 550 which would provide not only tax relief, but would also enhance equality of educational opportunity for all Americans.

If this bill were enacted, it would provide significant tax relief to the moderate- and low-income families, yet it would not be inflationary—a fear that is being expressed as a reason for not providing tax cuts using other methods.

Parents of private school children pay, and will continue to pay, their share of taxes to support public education. In fact, if all of the private schools were to close today, it would cost an additional \$14 billion for the public schools to accommodate them.

Yet there would be no more tax revenues to support these students since their parents are already paying their share of taxes for public school support.

And they will continue to do this as long as they are taxpayers. The tax relief that could come to them in terms of tuition tax credits would be for a finite period of time—12 years in most cases, 16 in others.

This tax credit, in turn, is not spent on goods and products which could contribute to inflation, but is invested back into purchasing educational services.

Most of the moneys spent for private education goes toward paying salaries and fringe benefits for the teachers in those schools who, in turn, pay income taxes on their salaries.

Tuition tax receipts, are therefore, adding to the Nation's productivity and tax income.

Taxpayers are subsidizing the education of every public school child on the average of \$2,500 per year. Opponents who say that public schools which receive a tax subsidy of \$2,500 per child would be hurt by a tax credit of up to \$500 are seriously undermining public confidence in their quality, if not condemning public schools.

Actually such objections are contradictory in themselves. If the present public school system has served our Nation so well, and continues to do so, why would a small share of justice in tax distribution cause parents to flee to the extent that the public schools would be destroyed?

The truth is that most parents, given good educational quality in public schools, would and do opt for the public school system. Those 10 percent who choose nonpublic schools do so mainly for religious, philosophical, and cultural reasons, or for special needs or preferences of the child.

Private schools are often depicted as bastions of the wealthy, but such is hardly the case. Of families with children in inner-city private schools, 72 percent report incomes of less than \$15,000, which constitutes an amazing overrepresentation of low-income families, since only 37 percent of all U.S. families have incomes of less than \$15,000.

Figures published by the U.S. Department of Education in December 1980, show that a staggering 80 percent of the families with children in nongovernment schools have annual combined incomes of less than \$30,000.

The issue involves the rights of the less affluent parents and frequently minorities. The issue is whether in America freedom of choice of parents in determining the education of their children is properly respected.

It is interesting to note that all democracies except the United States have worked out some means of giving help to their nonpublic schools. American private schools are almost unique in Western civilization since most countries of the Western Hemisphere and Europe have long recognized the financial advantages of a public-private school partnership in education.

Those countries acknowledge that it is a good societal investment—an investment in the development of human capital.

So, as you well know, since you helped draft the bill, so many of the arguments that we have heard today and yesterday against the bill have been taken care of by the bill.

The constitutionality question, the question of whether or not it is going to be helping schools—it's going directly to the parents—not the schools.

We recognize that through the income tax system, it is the simplest, least mechanistic method of providing this aid.

So, in summary, commitment to equality of educational opportunity for all Americans at the schools and colleges of their choice. And provision for tax relief for millions of middle- and low-income Americans must become basic policies of a Congress of a democratic republic.

Thank you.

Senator PACKWOOD. Doctor, thank you.

I hope these hearings, by the time we are done will have laid to rest the allegation that this bill is for the privileged elite. Witness after witness, whether as parents or administrators of diocesan schools or individual schools, clearly across the board, say that this, by and large, is not the case.

Two, I hope we have laid to rest the boogeyman that this is a racial bill that is going to encourage racial segregation. It is just the opposite.

As far as the constitutional question is concerned, the opponents who have used that argument would put you in a catch 22 situation.

They say the bill is unconstitutional, therefore, don't pass it.

When you say, how do you know if it's unconstitutional until the court tests it, they say it's unconstitutional so don't pass it. And there is no way to test it but to pass it.

When I was drawing up this bill I met with Ed Meese, and he said the administration would like to have a hand in drafting it, because they wanted to make sure that it was drafted in such a way that it would not go to court.

I understand the opponents are going to take it to court, if we pass it.

There is nothing we can do about that, and that is every American's privilege—to test the constitutionality of laws. The only thing we can do here is to pass it.

What I want to ask each of you is to lay to rest, if you can, one more myth. And that is that if we pass this, you are all going to immediately raise your tuition, and this is just going to become a Federal subsidy for the school, and the parents will be no better off than if we never pass the bill.

Dr. West, do you want to start?

Dr. WEST. Most definitely not. One thing we have heard this morning, too, is the competition between public and private schools.

Well, there is competition among private schools as well.

Certainly as Catholic schools, we are first and foremost dedicated to educating Catholics who can come there—most of whom could not afford it. We would not increase tuition—we are not profitmaking. That is not our purpose at all.

Senator PACKWOOD. Wallie Simpson.

Ms. SIMPSON. No. May I just briefly state that the passing of this tuition tax credit bill will not—



Most of our students that we service, as I stated earlier in my statement, are very low income or they are jobless, or they are on public assistance.

This particular group that we came about to service, and to be successful to the school; in the first place I don't think that the majority of them would benefit a great deal from the tax credit tuition.

However, I think that it is extremely important so that it will give an option, which is the main point, for a lot of people to have. Those who choose to send their children to private school.

Senator PACKWOOD. Thank you.

Joan Reinthaler.

Ms. REINTHALER. At Sidwell, close to 90 percent of the operating expenses of the school come from tuition payments.

I am on the admissions committee, and I know that every time the school has been forced to raise tuition because of inflation and other pressures, there has been a considerable amount of discussion of the effect that this has on lower income families, and the kind of restrictive boundaries it puts on the variety of students that we can attract.

I think the school is very conscious of the fact that the higher the tuition, the less possible it is to attract low-income students. And the school recognizes that it is to the advantage of everybody to have as wide a range of students and as wide a variety of backgrounds as they possibly can.

Senator PACKWOOD. Abigail Wiebenson.

Ms. WIEBENSON. I would echo what Joan has said, and also add that our school is a parent-run corporation. So there is no way they will be eager to have higher tuitions than the operating costs would allow.

Senator PACKWOOD. That is one of the best reasons I have heard. I didn't realize that.

Rabbi Keller.

Rabbi KELLER. I have to answer on two different levels, again, since I said I do represent various levels here.

Let me just quote from some of the figures on tuition in the Bais Yaakov Hebrew Elementary School. We are talking about nursery through eighth grade; 1980-81—the nursery tuition figure was \$806 per child. We are leaving it the same for 1981-82.

Kindergarten through eighth grade—1980-81, was \$1,650 per child. As I said before, roughly half or more of our parent-body has more than one child in school.

The tuition bill for somebody with two children without fees—

Senator PACKWOOD. But here, Rabbi, I want you to answer my question.

If we pass the tuition tax credit bill, are you just going to pass it along?

Rabbi KELLER. No, no. The figures I am quoting will illustrate the point that I am about to make.

It is germane to the question, Senator Packwood.

Presently for a family with two children, which is very usual by us, the educational tuition without any other fees, is \$2,690. The raise for the coming year is approximately 9 percent, which does not even meet the rate of inflation.

There is no way that we can raise tuition more than we are raising without parents squawking all over the place.

As I said before, our schools—our elementary schools, were organized by groups of interested parents who are dedicated to these ideals of excellence in their secular and religious studies.

They have taxed themselves to the limits. They are not going to raise tuition any more than they already are forced to without a big hullabaloo.

If there is going to be some tuition relief for parents, these parents will not allow it to be passed on to the schools. That is those who are paying full tuition.

Now, we have, as I indicated before, two-thirds of the parent body who are already on scholarships. The full scholarships will not be affected by this bill at all. Because, if they don't pay any tuition, they will not get any credit. That is obvious.

For those that are on partial scholarships, there will be no raising of tuition. If the parent feels that he is capable of paying a better share of his income, due to the tax credit the parent will indicate that to the school.

However, there will be no raising of tuition by saying, "Well, you people have more money. Let's raise the tuition level."

On the college level, I don't think it is germane at all.

Senator PACKWOOD. I don't think it is either.

And it is an interesting argument for those who oppose this. When they say tuition tax credits will be passed along, they never use the same argument to support basic opportunity grants or the student loan program. The argument is never raised. It seems to me if under one it is passed along, it will also be under the other.

Rabbi KELLER. There is another thing that is also germane to this issue. Our schools, the Jewish schools, suffer from another problem.

We don't know how to add, and we don't know how to subtract. I would say it is probably the policy of most of these so-called private schools, that they do not refuse any students. That is, from kindergarten and up. Nursery, we feel, is a babysitting service to a certain extent. It is not really education.

In nursery, we say if you can pay your way, fine. If not, keep the child home another year.

But once we get to kindergarten——

Senator PACKWOOD. Dr. West, I'm not going to let you answer that. [Laughter.]

Rabbi KELLER. When you get into kindergarten, we already have a learning process. We do not refuse any parent for not being able to pay tuition.

Senator PACKWOOD. Rabbi, I have got to stop you. I think I have got the answer, which is no.

Rabbi KELLER. Yes; you've got it.

Senator PACKWOOD. Thank you very much.

You've come from disparate distances, and I know—I can't tell if all of you were here this morning. I know the Rabbi sat through the hearings this morning. I saw him out there.

I appreciate you taking the time. And let me say something.

Pat isn't here. But he and I talked after the last hearing, before I came back. Indeed these are not just repeats of 3 years ago. We

find new facts every time. New evidence—the evidence that both Vitullo-Martin and Coleman gave today was extraordinary. It has never been unearthed before. And the record becomes a bit more complete.

As I indicated yesterday, 3 years ago, we had a very difficult time getting witnesses to admit that this country was basically founded on a private school system. There were no public schools. They would just not admit it.

The public schools as we know them did not come along until the 1920's and 1930's and 1940's.

Today that is no longer argued. That is now understood. One of the witnesses came up to me yesterday and he said, "You could use that argument, and that's true. Why we had slavery when this country was founded, too." And I said, "Yes, I wasn't arguing did we or didn't we have slavery. I was just arguing did we have private schools." And we did. That was all we had.

So, we move along. We build a record bit by bit. One day this bill will pass. And it is going to go to court, and it will be argued well on both sides.

And we will see what happens.

Ms. SIMPSON. Mr. Packwood, may I say just a quick statement, please?

Senator PACKWOOD. Sure.

Ms. SIMPSON. We have found out that less than 50 percent, although we have a very modest tuition of \$15 per week per child—we have found that in the inception of the school in 1976, that where there is more than one child in the family, it makes it very difficult. And therefore, we realize that we can only depend on less than 50 percent of the budget to run the school coming from the tuition.

And we also at this point, because the school has been fortunate enough to prove its value and quality, to have a very good quality program—we have found because of inflation and everything we will have to look to increase our tuition next year.

And what is happening, there are middle-income people who are applying to get their children into school. And it means that we have to face the reality that either the school closes down or we have to phase out those who are unable to pay their tuition.

This is a very unfortunate situation, and we have to find some way to try to alleviate it.

Senator PACKWOOD. Thank you very much.

[The prepared statements of the preceding panel follow:]

COUNCIL FOR AMERICAN PRIVATE EDUCATION  
1625 Eye Street, NW, Washington, D.C. 20006

Testimony on  
Packwood-Moynihan  
Tuition Tax Credit Bill  
S 550  
for  
U.S. Senate Committee on Finance

Joan Reinthaler  
Teacher of Math

June 3, 1981

Thank you for allowing me to be here today.

I am a teacher, and, except for a seven-month stint with the U.S. Department of Education, I have been teaching on the secondary level in independent schools since 1958. Currently I am the chairman of the mathematics department of Sidwell Friends School here in Washington. I have been at Sidwell for 10 years.

Sidwell Friends is a Quaker school with roughly 1000 boys and girls in kindergarden through 12th grades. Its student body, mostly non-Quaker, is drawn from the whole greater Washington metropolitan area and represents a wide variety of backgrounds, cultures and traditions. Minority enrollment is close to 17%. Ten percent of the students receive financial aid. Some of the students have unusual intellectual, creative or physical gifts, some have learning disabilities that throw road blocks in the way of their academic progress, and some have significant physical disabilities.

It is stated in the preface to the Handbook for Students, Parents and Faculty that, "Sidwell Friends School seeks to provide every student the opportunity for full intellectual, personal and social growth and to inspire students with a sense of personal responsibility and a social conscience."

This is a little like apple pie and motherhood. Every good school aspires to these goals as stated in one form or another. At Sidwell, the key to their attainment is the individual attention possible in a school that is not tied to a larger bureaucracy, where the system can be flexible and where it is possible to adjust programs and pace to the wide range of ability and maturity levels one finds in any group of young people.

Specifically, in academic areas, the school provides advanced college level courses when there are students who are ready to take them, and special courses for students with learning disabilities in subjects where this is necessary. A variety of teaching styles and methods insures that the needs of each student will be met somewhere, and, of course, there is constant one-on-one help available in every course. Students tutor each other, and upper school students assist in programs in the middle and lower schools from time to time.

In the more elusive areas of personal and social growth, the school tries to guide and to teach in much the same way that a healthy family does, by example and by giving students a lot of rope and the chance to make mistakes and to learn from them. This entails considerable patience, faith and, at times, disappointment and frustration. Children do not grow up in uniform and predictable patterns, but, ultimately, by graduation, most Sidwell students have absorbed the Quaker belief that underlies all the noise and energy of student life there, that "there is that of God in every person". Most have

come to a feeling of genuine respect for others and for their differences. Most have come to value others for a variety of talents, qualities and virtues, and most of them have developed into good and caring people. The school cannot take credit for all this, but at least it has supported the direction of this growth.

Although Sidwell is not a neighborhood school, each of its students is, of course, a member of some neighborhood, and a number of these students have, through the years, contributed significantly to their communities by doing volunteer work in a wide range of areas from tutoring in schools and supervising playground programs to working in homes for the terminally ill.

Several years ago, the school senate, an organization of students, faculty and administrators, took up the philosophical issue of the schools's relationship to the neighborhood in the context of the Quaker tradition of community responsibility. The outcome of a lengthy and intense series of discussions was the recommendation that this active involvement of the students in the larger world be institutionalized, that the school should require significant community service of all its students in their high school years, and this recommendation was accepted by the student body. Currently every student works for at least 30 hours in some area of community need, and many work in these jobs throughout a larger portion of their high school careers.

Sidwell is not a representative independent school. There is no such thing, for there are as many varieties of independent schools as there are independent schools themselves. But it does provide one alternative, and it is in the richness of these alternatives, I believe, that the strength of education, public and private, lies.



**I Credentials**

- A. Teacher and Chairman of Mathematics Department at Sidwell Friends School
- B. 23 years of teaching experience in Independent schools.

**II Description of Sidwell Friends School**

- A. Quaker School
- B. Coed enrollment of 1001, kindergarden - 12th grade
- C. 17% minority enrollment
- D. 10% receive scholarship aid
- E. Enrollment reflects varied backgrounds and cultures

**III Goals**

- A. As stated: to provide opportunity for intellectual, personal and social growth; to inspire students with a sense of personal responsibility and social conscience.
- B. Methods of attainment
  - 1. Intellectual
    - a. individual attention
    - b. special programs
    - c. flexibility
  - 2. Personal
    - a. by example
    - b. by learning from mistakes
  - 3. Social: requirement of significant community service

Testimony to Senate Finance Committee  
Reference - Packwood-Moynihan Tuition Tax Credit Bill S 550  
June 4, 1981

From: Mona Hanford

Our children are presently enrolled in private schools. My husband and I have made this burdensome financial commitment after much careful consideration and after trying public schools.

Developing the mind, spirit and body of our children is a once in a lifetime opportunity. Having roots back to a generation that left Russia before the Revolution, my family lost money, land and title. I grew up to appreciate the value of education - a living legacy. Education cannot be stolen, left behind or appropriated.

We turned to private education because it is the only avenue in this country which allows for the total development of mind, body and spirit in combination. Religious and moral standards help develop a sense of discipline and duty to God and country. They point out the fullness of life thus avoiding the materialistic attitude which is so pervasive today.

- A knowledge of genetic engineering without recognition of the value of creation is dangerous.
- A knowledge of nuclear physics without moral commitment could be catastrophic.
- A knowledge of economics without human compassion for a social safety net is unacceptable.

Even the basic education to fill out an employment form is useless without the discipline to show up for work and the work ethic to see the job done.

The sacrifices made by parents to send their children to private school are becoming intolerable. Neighbors who send their children to public school have vacations, new cars and country clubs. We gladly give up these things for the well rounded education we want to leave as a living legacy for our children and society. But no matter how much we sacrifice, the point is soon approaching when Middle Class America may no longer have the option available even with sacrifice. In the last five years tuitions have gone up to the point where they represent more than 25% of our after tax income. I work fulltime just to help offset educational costs.

Without tuition tax credit private schools will be the bastion of the rich and the few poor on scholarship.

Please help Working Americans.

Summary of Testimony  
of Rabbi Chaim D. Keller Rosh Hayeshiva of Telshe Yeshiva  
of Chicago, before the Senate Finance Committee, June 4, 1981

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- 1.) As one connected with administrations of Jewish Schools from nursery through College, I support the Tuition Tax Relief act of 1981.
- 2.) The parents of Jewish Day Schools are experiencing great difficulties, bearing a heavy tuition burden in addition to taxes for support of Public Schools.
- 3.) The Orthodox Jewish Community's survival is based on the existence of their schools. This for us is a basic exercise of the First Amendment, freedom of religion. Our schools must have state mandated secular studies, yet our taxes do not pay for them.
- 4.) Well over half of the Day School students come from the ranks of the poor and the lower middle class.
- 5.) The tuition necessary to maintain our schools are above the means of most of the parent body. Even were they to pay full tuition this would not begin to cover costs. Facts and figures are submitted to support these statements.
- 6.) Appendix: Two tables on tuition facts and figures.

My name is Rabbi Chaim D. Keller.

I am Rosh Hayeshiva (Head) of the Telshe Yeshiva, Chicago - which includes two main divisions: A Rabbinical College (recognized by the AARTS, an official accrediting agency of the Office of Education) and a High School Preparatory Academy.

I am also Chairman of the Board of Education of the Bais Yaakov Hebrew Parochial School in Chicago, an elementary school.

I am here to testify in favor of the Tuition Tax Relief Act of 1981.

Since I do wear these two hats, and am also a parent of children attending Jewish Parochial Schools, I am in a position to present the viewpoint of one who is on the firing line in the battle to maintain excellence in private education from nursery through college level.

The schools which I represent are typical of the 477 Jewish Elementary and High Schools in 36 states with a total school population of approximately 92,000, and of the 85 Jewish Schools of higher learning serving close to 8,000 college students.

I should like to bring to you the plight of a group of Americans who are hard strapped to make ends meet in the continuing struggle to keep the doors of the schools of their choice open to their children, which in most cases involves a heavy burden of tuition payments on top of the taxes they are paying to support the public schools.

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First, I think it is necessary, if this has not already been done, to dispel the myth that only Catholics will benefit from Tuition Tax Credits. The Orthodox Jewish community has its very survival staked on the continued existence of its Day Schools and Colleges.

For us the freedom of choice in education is not just a luxury, but the most basic exercise of our First Amendment Rights to freedom of religion. Without our educational system, our religion would disappear.

Yet we are obviously not asking the government to support our religion but to help us provide our children with the state mandated secular education which our tax dollars are not providing us, but which we are paying for from our own pockets.

This brings me to another myth: that those who attend private schools, and especially Jews, can well afford their tuition charges. This is simply not so. Varying from city to city and from area to area, well over half of the student population of our schools come from the ranks of the working poor and the lower middle class.

Let me submit to you a table of Tuition and Student expenses from the two schools which I represent. You will note that the tuition for one child in the Bais Yaakov Elementary School is \$1,650. Of course there are reductions for more than one child from a family.

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But you must realize that many of our parents have 3 or 4 or more children in school. A tuition bill for three or four thousand dollars is not unusual.

But how many actually pay that full tuition bill? How many who are not downright affluent can pay that bill? The figures are these: Of a total of 314 students, only 113, a little more than 1/3 can afford full tuition. (And I guarantee you, with our tuition committee, whoever can, does pay full tuition). There are 16 children (5% of the total) who are on full scholarships -- cannot afford a penny. The rest -- 185 out of 314, or about 60%, are on partial scholarships indicated by financial hardship. What is more, if all of our parents would pay full tuition, we would still be 30% short of covering our budget. As it is, the tuition does not cover half of the budget.

You will note that we have had to make an increase to \$1800. per child for next year, which adds to the almost unbearable burden the parents are already shouldering.

On the High School and College level, the picture is even more striking. The tuition on this level is \$2170 per student. Of a total student enrollment of 124, only 7 pay full tuition, 28 are on full scholarships, and 89 are on partial scholarships. It must be remembered that most of the parents of these High School and College students have also one or more children attending elementary day schools.

-4-

We have had to increase our tuition rate almost 30% over a three year period just to keep our heads above water. Yet the income from tuition still represents less than 20% of the total budget.

On all levels our schools and our parents are going through a financial crisis of severe proportions.

The objective of this Tax Relief Act is to provide assistance to parents - assistance to those who are being overtaxed - assistance to those who cannot afford to pay full tuition, as a result of which the schools of their choice suffer and must curtail their educational programs and settle for less than that which our children are entitled to.

The time has long since passed when the American public can turn a deaf ear to the plight of private school sector which has done so much to raise the level of education for all children and which has produced and is producing some of the outstanding leaders of our country.

**STUDENT EXPENSES**  
**TELSHE YESHIVA - CHICAGO**

<u>Academic Year</u> 1979-80	<u>1980-81</u>	1981-82 (Projected)
Tuition and Fees      \$1970.	\$2170.	\$2470.
Room and Board      1530.	1880.	2030.
<u>Total Expense</u> \$3500.	\$4050.	\$4500.

Total Income		
Room & Board \$102,000.	\$137,928.	\$151,720

	<u>High School</u> 51	<u>College</u> 73	<u>Total</u> 124
Number of Students on Full Tuition	3	Full Tuition 4	7
Number of Students Full Scholarship	8	Full Scholarship 20	28
Number of Students Partial Scholarship	40	Partial Scholarship 49	89



## TUITION EXPENSES

BAIS YAAKOV HEBREW PAROCHIAL SCHOOL  
CHICAGO, ILLINOIS

FULL TUITION	1980-81	1981-82 (Projected)
Nursery	\$806.00 per child	806.00
Kindergarten through 8th grade	1650.00 per child	1800.00

CURRENT ACADEMIC YEAR

Total number of students . . . . 314.

Number of students  
paying Full Tuition 113

Number of students  
Full Scholarship 16

Number os students  
Partial Scholarship 185

Total Expenses	1980-81	1981-82 (Projected)
	\$550,051.	591,595.

Total Income From Tuition

	<u>1980-81</u>	<u>1981-82 (Projected)</u>
Nursery	\$ 24,882.	\$ 27,500.
Kindergarten through 8th grade	\$207,848.	\$256,376.

TESTIMONY

SENATE FINANCE SUBCOMMITTEE HEARING

ON

TUITION TAX CREDIT

DIRKSEN SENATE OFFICE BUILDING (Room 2227)

WASHINGTON, DC

June 4, 1981

WALLIE SIMPSON, PANELIST

FOUNDER/DIRECTOR

LOWER EAST SIDE INTERNATIONAL COMMUNITY  
SCHOOL, Formerly Lower East Side  
Community School

203 RIVINGTON STREET

NEW YORK CITY, NEW YORK 10002

212 533-5003

Thank you, Mr. Chairman and members of the Senate Finance Subcommittee for the opportunity to participate in these hearings to explore ways and means of sustaining and expanding the involvement of non-public schools in educating our children.

One of the main foci of The Constitution, and The Bill of Rights in particular, is the deference that it bestows upon the individual and the Government's responsibility to protect that individual's right to pursue happiness. Through the years, the public school system became the vehicle to provide the tools to help that individual in his pursuit of happiness. The public school system has not been able to maintain itself as a vehicle to fulfill dreams, hopes and aspirations but rather has rendered a number of individuals worthless to themselves and to society. For the urban centers, the public school system has become well known for its underachievement, violence, drug abuse, vandalism, truancy, sexual problems and dropouts. For the most part, we are witnessing the collapse of a public system that has become a killer of dreams and an accomplice to broken promises.

LESICS, a non-sectarian school for children from 2½ to 14 years old, was started because I, like many parents, wanted my children to begin school in a setting with the nurturing attributes of the traditional family i.e., love, positive discipline, staff whose personalities exemplify the scriptural message of First Corinthians, chapter 13, plus an exciting, inspiring and challenging academic program. The public schools do not fit this description.

Our school became international because of its commitment to exercise flexibility in attuning its philosophy and curriculum to a world vastly reduced to sophisticated communications systems and supersonic transportation; thus, the child should learn early to appreciate differing cultures and to know that events in any one part of the world

affect all human beings.

LESICS has amended its curriculum to include advanced skills in the cradle. Students from the age four are required to study two languages, and learn in addition to mathematics and language arts, science as well.

Ours is a low budgeted school. Our student body is made up of children from public schools (mostly African-Americans and Hispanics). We have a non discriminatory policy. We are extremely pleased with our students' success:

(a) About 98 percent of our students are reading on and above their grade level; and about 20 percent of the students are reading from 2 to 4 grades above their grade level.

(b) At least 95 percent of our students are presently one full level above their grade in mathematics.

(c) All of our students receive a homework assignment for at least one week in advance. These mimeographed assignments are designated for parents as well so that they are constantly aware of what studies are required of their children. Parents must sign the homework as evidence that they (parents) are creating the proper atmosphere for study and making sure their children are studying.

Parents' role in the success of their children cannot be overemphasized in the initiative school years. Communication between parents and schools must be constant. The parents must demand competency, high academic standards, order and positive character support from schools. And schools must demand from parents frequent visits, consistent love and emotional nurturing of their children, availability, overseer of discipline, good study habits, censors of television for their children and provide spiritual guidance. Combined, the school and home prepares the child to

survive the turbulent adolescent years ahead.

The academic performance of our students indicate that the tests we are presently administering will produce greater achievement than those just cited. However, LESICS understands that because some students bloom later academically, the school should inspire the child's best at a given point but must have the sensitivity and insight to support and reinforce self confidence. History has shown that some of the greatest contributors to the uplift of the human condition were people who were labeled as stupid. Therefore, schools are obliged to provide the groundwork for an added definition of success in educating children, i.e., instilling confidence and hope. The goal must always be value and quality. Unless this goal is pursued money becomes a waste in terms of assuring success.

#### THE TUITION TAX CREDIT RECOMMENDATION

I strongly support the tuition tax credit recommendation as an incentive for parents who choose to send their children to non public schools. This recommendation hopefully will be the beginning of a competitive educational pluralism that will encourage the disestablishment of a public school system that has become a monopolistic enterprise whose cost escalates in direct proportion to its failures.

We strongly support also the President's Commission of School Finance's recommendation for the voucher plan for parents of inner city school children. Poor families were given access to the Lower East Side International Community School at its inception. The tuition was only \$15 per week/per child so that poor families could have an alternative to the public school for their children. And, believe me, it is a miracle from God to operate an independent school whose student population is poor when the school cannot depend on tuition

being paid consistently even though it is modest. If inner city poor people are to have the opportunity to establish alternatives to the public school system, they need, in addition to the tuition tax credit, the voucher plan.

#### BUILDINGS FOR NON PUBLIC SCHOOLS

Since its inception, LESICS has been housed in a former public school building with a \$1 to \$300 month-to-month lease from New York Department of Real Property. Because of the month-to-month lease, foundations, individuals and corporations would not give us financial support for the much needed renovation of the building, not even funding to renovate our antiquated heating system. And although we protected the school from vandalism, provided jobs, and maintained a reputation for having a quality program, the city would not give the school an extended lease.

In addition to its regular school program LESICS has been opened every summer to serve all ages in the community through its summer food program, Neighborhood Youth Corp Training and remedial reading and math programs. We have also provided space for community groups to put on their programs. In terms of serving human needs, LESICS never sleeps. The cost of maintenance, upkeep and utilities for the school is astronomical!! Having no money I have had to serve as janitor, fire the boilers, assist in removing ashes, paint, and when necessary, fire the boilers all night to prevent pipes from busting during extremely cold weather.

Not only did the school not get an extended lease from the city, after 4½ years the city auctioned off the building. Fortunately, the buyer gave the school a 25 year lease without rental money pressure, but with responsibility for renovation and upkeep. Now we are searching

and waiting for commitments for funds to renovate.

We strongly recommend that non public schools be allowed an extended lease on abandoned public school buildings in exchange for upkeep and maintenance. And due to the escalating cost of utilities, that non profit, non public schools be allowed to purchase utilities at the same cost as public schools.

Finally, America is super active with its think tanks, research laboratories, space explorations, genetics - in short, America thrives on challenges and accepts the Scripture Admonition that "Without Vision The People Perish." We should welcome and support the institutions finding answers to salvage our children's minds and hearts. After all, the greater the number of successful healthy minded citizens, the greater the country.

## GEORGETOWN DAY SCHOOL, Inc.

Testimony of Abigail B. Wiebenson, Assistant Head, Lower School  
 Re: Packwood-Moynihan tuition tax credit bill, S. 550 June 4, 1981.

I would like you to know that while I am a product of Independent schools and represent one here today, I am certified to teach in Massachusetts' public schools and have taught both in the San Mateo, California public school district and here in the District of Columbia public school system. Our two school-age children presently attend D.C. public schools.

I come to this panel as a representative of Georgetown Day School located on MacArthur Blvd., in the District of Columbia. We are an independent school service approximately 750 students from Pre-Kindergarten through 12th grade. My specific job as Assistant Head of the Lower School is that of coordinating curriculum for the 250 Pre-K through fourth graders.

Our student body has always very much reflected the racial and economic diversity characteristic of the District from which we get about 80% of our population. Between 20-30% of the students are from the classification known as minority. In addition we have a number of children from foreign countries. While philosophically there are no full scholarships, every effort is made to give financial help to families who apply to the scholarship committee and who, without aid, would have difficulty in paying the tuition of between \$3-4,000 depending on the grade level.

For most parents, the decision to send their children to Georgetown Day is a thoughtful choice. Many are true believers of the public schools who have become frustrated with their vicissitudes of which you and I read about too frequently in the newspapers and which hamstring both the honest efforts of potentially fine teachers and short change the curriculum. Between 70-80% of our parents have husband and wife careers. They have to have a school they can depend on which can provide after school care for our younger children. We do. Parents also enjoy the many opportunities to participate in school life individually going on field trips and camping trips, helping our younger children with daily journals, hearing child development specialists contributing to development projects and simply being welcomed any time to observe the curriculum and discuss the progress and needs of their children.

Our curriculum is designed to embrace a fundamental, ultimately college preparatory body of knowledge. It is not, however packaged in a pour-it-down traditional vessel theory of learning. In the Lower school, for example, each classroom has two teachers-co-teachers with generally 25 children. The schedule is arranged so that there are times during each day when half groups are at Science or Music or Art so that there are a dozen children with two teachers in the classroom enabling a very personalized kind of instruction in Language arts, Social Studies and Mathematics. It's an exciting curriculum which finds us making daily use of unique resources the metropolitan area offers to cement and make real classroom instruction.

Lower School	High School
4530 MacArthur Boulevard, N.W. 333-7727	4880 MacArthur Boulevard, N.W. 333-7743
Washington, D.C. 20007	



For example the 8th grades use the silk screening staff and equipment of the Corcoran to extend our own print making facilities. Fourth grades build on their knowledge of topographical map reading by using Prince William Forest's orienteering course. 120 students from the High School construct a three day model United Nations drawing heavily on the advice and knowledge of local Embassy and agency personnel. The fourth graders culminate their year long study of Colonial literature and life with three days and two nights spent at Turkey Run Farm's environmental living center. We are also close enough to other independent schools to have a lively, friendly physical educational competition.

Our curriculum intends to meet different learning styles and backgrounds. We have a support system to help remediate gaps in children who come to us after kindergarten or who simply learn at dramatically uneven rates. We work hard at constructing curriculum activities which have an open-ended quality allowing each child to stretch and grow to the best of his ability. For instance, in studying Greek mythology in the 4th grade there is a selection of books spanning reading levels from third to ninth grade. A large number of our students go entirely through Georgetown Day; its spiraling curriculum is designed also to build on a growing common frame of reference, yet does not penalize children who are admitted along the way. A child may start French or Spanish for example at 5th grade, at 7th and at 9th grade. It would be unfair not to mention what has come to be known as the hidden curriculum. By this I refer to some of the underlying philosophies of the school - the things we value as an institution. One of these is the importance of diversity as a positive force in our student population. Another is the fact that the arts are considered an integral part of the curriculum rather than frills. We expect a high standard of personal and academic behavior from our students. We value initiative and the sense of responsibility that must be its complement. Children are not to be patronized. Sex stereotyping is not tolerated. We greatly value the pleasure of learning as well as the process of learning which is not always comfortable. There are times when choices are appropriate and other times where compliance is the only choice. We want above all for our students to become informed, articulate, generous and compassionate adults. We expect them to become valuable and responsible contributors to a democratic society as well.

I hope that this brief description has given you a sense of Georgetown Day as a stimulating, diverse, dynamic and rigorous environment in which to work and learn. Only 10 minutes away, please feel free to visit us anytime during our academic year. Thank you for allowing me to testify today.

Megan B. Wickenson

STATEMENT OF DR. GAIL B. WEST, SUPERINTENDENT OF EDUCATION  
CATHOLIC DIOCESE OF ORLANDO, FLORIDA

TO

SENATE FINANCE COMMITTEE

RE: S.550 -- A Bill to amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition

Short Title - "Tuition Tax Relief Act of 1981"

Date: June 4, 1981

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These past few days, members of both Houses of Congress have been meeting with the President in an attempt to work out compromise legislation for tax cuts. Senator Dole and others seem to be most interested in effecting tax relief especially for middle income workers who make between \$20,000 and \$50,000 per year.

In concert with these efforts are those Congressmen who deem it appropriate to give some tax relief to those individuals and families "who must pay tuition to obtain the education that best serves their needs and aspirations -- whether at the primary, secondary, or post-secondary level."

Several members of this committee -- Senator Packwood, Senator Moynihan, Senator Roth, Senator Durenberger, and Senator Heinz -- are among the co-sponsors of Senate Bill 550 which would provide not only tax relief, but would also enhance equality of educational opportunity for all Americans.

If this bill were enacted, it would provide significant tax relief to the moderate and low income families, yet it would not be inflationary -- a fear that is being expressed as a reason for not providing tax cuts using other methods.

Parents of private school children pay, and will continue to pay, their share of taxes to support public education. In fact, if all of the private schools were to close today, it would cost an additional \$14 billion for the public schools to accommodate them. Yet there would be no more tax revenues to support these students since their parents are already paying their share of taxes for public school support. And they will continue to do this as long as they are taxpayers.

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Senate Finance Committee  
RE: S.550

The tax relief that could come to them in terms of tuition tax credits would be for a finite period of time -- 12 years in most cases, 16 in others. This tax credit, in turn, is not spent on goods and products which could contribute to inflation, but is invested back into purchasing educational services. Most of the monies spent for private education goes toward paying salaries and fringe benefits for the teachers in those schools who, in turn, pay income taxes on their salaries. Tuition tax credit receipts are, therefore, adding to the nation's productivity and tax income.

Adam Smith, in his great work Wealth of Nations, laid down four maxims of taxation. His last maxim was, "Every tax ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state," citing as one of the ways by which this maxim is violated is by imposing a tax which "may obstruct the industry of the people, and discourage them from applying to certain branches of business which might give maintenance and employment to great multitudes . . . While it obliges the people to pay, it may diminish, or perhaps destroy, some of the funds, which might enable them more easily to do so."

Taxpayers are subsidizing the education of every public school child on the average of \$2,500 per year. Opponents who say that public schools which receive a tax subsidy of \$2,500 per child would be hurt by a tax credit of up to \$500 are seriously undermining public confidence in their quality, if not condemning public schools.

Actually such objections are contradictory in themselves. If the present public school system has served our nation so well, and continues to do so, why would a small share of justice in tax distribution cause parents to flee to the extent that the public schools would be destroyed?

The truth is that most parents, given good educational quality in public schools, would and do opt for the public school system. Those 10 percent who choose non-public schools do so mainly for religious, philosophical and cultural reasons, or for special needs or preferences of the child.

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Private schools are often depicted as bastions of the wealthy, but such is hardly the case. Of families with children in inner-city private schools, 72 percent report incomes of less than \$15,000, which constitutes an amazing over-representation of low-income families, since only 37 percent of all U.S. families have incomes of less than \$15,000. Figures published by the U.S. Department of Education in December, 1980, show that a staggering 80 percent of the families with children in non-government schools have annual combined incomes of less than \$30,000.

Why do black and Hispanic inner-city parents send their children at great personal sacrifice to inner-city private schools — schools in old dilapidated buildings, with totally inadequate facilities and equipment, with teachers grossly underpaid, and in which they themselves are often expected to contribute labor and services?

In a recent study conducted by the Catholic League for Religious and Civil Rights in eight major cities, minority parents answered that question in a voice that was virtually unanimous. They want quality education for their children. By quality they mean an education that includes religious and moral values as well as rules and discipline, an education which instills in their children a sense of self-respect, self-worth and high expectations in their ability to achieve.

Recognizing this basic freedom, the proposed legislation calls for "Congress" to declare "it to be the policy of the United States to foster educational opportunity, diversity, and choice for all Americans" and to recognize "the right of parents to direct the education and upbringing of their children . . . to obtain the education that best serves their needs and aspirations."

The issue involves the rights of the less affluent parents and frequently minorities. The issue is whether in America freedom of choice of parents in determining the education of their children is properly respected. It is interesting to note that all democracies except the United States have worked out some means of giving some help to their non-public schools. American private schools are almost unique in western civilization since most countries of the western hemisphere and

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Europe have long recognized the financial advantages of a public/private school partnership in education. Those countries acknowledge that it is a good societal investment — an investment in the development of human capital. The more educated people are, the more they will add to the Gross National Product, and the more taxes they will pay. They know that education is a civilizing and taming force as well. It may cost \$2,500 to keep a youngster in school, but it costs \$25,000 per person per year to keep him in a federal penitentiary. Conversely, the less education a person has, chances are reduced that he could get a job, or a very good job, which places him on the poverty and unemployment rolls.

Minority parents of children in inner-city private schools regard education as their children's only escape from the demeaning cycle of functional illiteracy, unemployability, poverty and welfare dependence. To enable their children to break that cycle, to enter the mainstream of our society, they willingly do without many of the essentials of a meager existence to send their children to inner-city schools.

It is for this reason that refundable tuition tax credits represent much more than extra food on the table; they represent official encouragement of the cherished belief that America is the land of opportunity, that each succeeding generation can look forward to a better future than the last. Unless Congress wants to deprive minority parents of that belief, thus creating a permanent underclass in American society, it dare not sever the refundability provision from the Packwood-Moynihan Bill.

The Packwood-Moynihan bill has all of the safeguards built into it, thus eliminating so many of the arguments against this proposed legislation. It is structured in accord with all provisions of the Constitution. To say it is unconstitutional is presumptuous. Its constitutionality, however, cannot be tested unless it becomes law. It disallows racial or ethnic discrimination. Most of us who support the bill would not if this provision were not there. It provides for exclusion of payments other than tuition and fees. It provides for adjustments for certain scholarships and veterans benefits. Schools must meet certain criteria. Schools are protected from government interference since this is a tax credit to individuals, not schools. It becomes a part of the income tax process, thereby does not require added expense or complexity in its administration.

Commitment to equality of educational opportunity for all Americans at the schools and colleges of their choice and provision for tax relief for millions of middle- and low-income Americans must become basic policies of a Congress of a democratic republic.

Senator **PACKWOOD**. Let's move on to the next panel which is Jeanne Frankl, Grace Baisinger, and Claudia Waller.

Why don't you wait a moment until the people that are going to leave clear out and then begin.

All right, who is going to go first. Jeanne Frankl?

**STATEMENT OF JEANNE S. FRANKL, CHAIRMAN, COALITION OF CITIZENS AGAINST TUITION TAX CREDITS AND EXECUTIVE DIRECTOR, PUBLIC EDUCATION ASSOCIATION, NEW YORK, N.Y.**

**Ms. FRANKL**. I am the executive director of the Public Education Association of New York City, the oldest group in the Nation established to represent citizens' concern for quality education.

I am here today as Chair of New York City Citizens Against Tuition Tax Credits, a large and growing coalition of influential organizations and individuals.

Our coalition includes civic organizations, church groups, labor unions, and parent organizations representing well over 400,000 parents, 80,000 teachers, 3,000 administrators, and thousands of just plain concerned citizens.

We oppose this legislation because it is inflationary and regressive and unfairly taxes the public to pay for private options.

But above all, because it is an unsound intervention by the Government in matters of social and educational policy.

The genius of our country is that it has united people of different religious and national origins to a degree unparalleled in history. Our public schools have been the chief instrument of this extraordinary accomplishment.

Under the banner of fostering diversity and choice for Americans, S. 550 would erode the Nation's support of a public education system which is genuinely diverse.

We share the concern expressed in S. 550 that personal liberty, diversity, and pluralism among our children constitute important strengths in American education.

But these are strengths that grow out of a public education system that serves children of all races, groups, and creeds. Pluralism is not achieved through proliferation of sectarian institutions, devoted to serving a single group or perpetuating a single idea.

Public finance for this kind of pluralism is not a legitimate public purpose. The experience of other foreign countries with more homogeneous population demonstrates that separatist education systems are the foundation for analagous social and political movements.

As your distinguished colleague, Senator Hollings, has said, "The duty of Congress and the United States of America, with respect to such schools is to leave them alone."

Federal enactment of tuition tax credits for private school parents would establish a policy of public support for such institutions, reaching into every State and affecting every public education system, parent and taxpayer in the Nation.

Polls report that 64 percent of the American public oppose this tuition tax credit. Yet all of us would pay, whether or not we, or our States and cities, support the premise.

Education is a State function. And this is an innovation of the kind which this Congress, above all, has pledged to avoid.

It is, of course, plainly unconstitutional. The Supreme Court has made clear that to avoid the prohibition against establishment of religion, apparent aid or school aid measure must have a primary effect which neither enhances nor inhibits religion.

S. 550 contemplates plenary aid to religious schools, unconstrained in its use. As the U.S. Supreme Court noted, in holding unconstitutional an almost identical State law in New York, in *Committee for Public Education v. Nyquist*, there has been no endeavor to guarantee the separation between secular and religious educational functions and to ensure that government financial aid supports only the former.

Some of Senator Moynihan's comments about S. 550 focus on the fundamental problem with this legislation. I say this with deference both because of Senator Moynihan's intellectual distinction and the candor with which he has discussed the proposal.

However, on February 24, in congressional testimony, he pointed out that the schools other than the parochial which would benefit from the legislation were "private schools for upper-income families, schools resembling and often modeled on the English public schools."

"Just at present," he added, "the number of such schools is growing." It was also at that time that he perceived parochial schools as declining. Thus, he affirmed what we all know—that if tuition tax credits serve the 10 percent of children currently in private schools, they will primarily serve the well-to-do.

If, on the other hand, the legislation has the effect which some predict of drawing more children into private education, it will expand the parochial system at the direct expense of the public systems the children now attend.

The groups that I represent are groups that support public education and work to improve it. And we know as well as anyone the strengths and deficiencies of public efforts to educate urban children for productive citizenship.

But as you consider whether or not to support S. 550, you must ask whether we can afford to detract from the public school's ability to do this job. The potential of the public schools is revealed by the degree in which they have met rising expectations over the years.

For example, at the turn of the century, less than 7 percent of students graduated from high school. Today the proportion of 17-year-olds who graduate from high schools nationwide is more than 75 percent.

This reflects the sharp increase in success of minority students. Moreover, the public schools are learning to do their jobs better in this decade.

For example, last week the New York Times reported the success of a growing assortment of Federal, State and local programs assembled to concentrate on ameliorating learning deficiencies.

In New York City, public schools are engaged in concentrated programs to improve students' basic skills.

Our reading scores have gone up significantly in each of the last 2 years, with gains registered in every single one of our very diverse school districts.

Tuition tax credits would mean an enormous shift away from public education of the resources which have made it possible for us to do this job.

Senator PACKWOOD. We will have to ask you to wind up. Your entire statement will be in the record.

Ms. FRANKL. Well, I would just like to say a little bit about the private school systems, in considering whether you should divert revenues from the public schools to support them.

Whatever the virtues of some of the private schools now serving 10 percent of the Nation's children, they cannot be expected to make a substantial contribution to the job of educating the other 90 percent.

Leave out for a moment the problem of their exclusivity. The fact is that even those purporting to have policies of socioeconomic and racial integration exclude the difficult, the handicapped, the bilingual and so on.

Leave out the fact that S. 550 exempts them from prohibitions against segregation and discrimination against women. Current romanticism about private schools ignores the fact that for every excellent example there is a school which does a poor job of teaching both American values and the 3 R's.

It forgets that State standards for public schools are stricter than those for the private, which some States do not regulate at all.

Increasing numbers of private schools lack the accomplished staff, the full curriculums, the health and sanitary facilities, libraries, and criteria for graduation necessary for effective education.

As private schools are more heavily relied upon to educate more children, these problems will not diminish, but increase.

People who think we can scrap the painstaking efforts to refine and improve public schooling in the hope that private institutions will assume our longstanding burden are unrealistic.

It is always a great temptation to desert an anxious and difficult commitment—like public education—on the glamorous promise that a new and untried system will meet the needs and avoid the problems of the old.

This is——

Senator PACKWOOD. I am going to have to stop you, so that we can move on. Let me say this, having been in the Senate 12 years, if you have a full statement, you are better off to put it in the record and abbreviate it orally than to read a quarter of it and not get through it.

Ms. FRANKL. Thank you, Senator Packwood.

We do have a longer statement that has been submitted.

Senator PACKWOOD. I know it, and I have it.

And I've read it.

Next, we will take Grace Baisinger.

**STATEMENT OF GRACE BAISINGER, CHAIRPERSON, NATIONAL COALITION FOR PUBLIC EDUCATION ASSOCIATION, WASHINGTON, D.C.**

Ms. BAISINGER. Thank you.



Mr. Chairman and members of this subcommittee, and I'm certainly sorry that Senator Moynihan is not here. I remember my testimony in 1977-78.

I am now, as I was then, chairperson of the National Coalition for Public Education.

And with me is Arnold Fege, who is coordinator for the coalition. The coalition consists of organizations that have a constituency of over 70 million members, is unified in its effort to defeat tuition tax credit legislation.

Enactment of a tuition tax credit would be a debit to our society, our schools, and our tax system. A debit that we can ill afford in dollars and cents, and a debit which sound public policy, as well as sound public schools, demand we reject.

Although the forum for our discussion this afternoon is national, the effects will be felt in every classroom and every community in the country should tax credits become law.

Tuition tax credits, we believe, are a bad idea. They would be bad economic policy, bad educational policy, and bad public policy.

They would offer a scant benefit to the few States where private schools are concentrated at the expense of the majority of States from which they would drain away money.

They would favor the affluent at the expense of the poor and middle-class family. They would force a Federal revenue loss, a tax expenditure of at least \$4 billion a year.

They would bust the budget in creating new entitlement programs, at the very same time when the administration and Congress is telling the elderly their social security benefits must be reduced.

And the hungry, the disadvantaged, the unemployed, the handicapped and the low-income people are being told that they must do with less.

It is incredulous that at the same time, our wealthiest families are being told that they can expect to enjoy a tax credit so that their children can attend Sidwell Friends, Exeter, and so on.

It is unbelievable that despite this austere year in which all of us are asked to sacrifice, we are seriously considering a multibillion-dollar program, for approximately 10 percent of our population.

Clearly, tuition tax credits constitute a change in fiscal and educational policy that is not in the public interest, for the following reasons: One, tax credits would undermine the financial base of our Nation's traditional system of tuition-free universal public education.

Public schools are currently underfinanced, due to State tax cuts and scarce local resources. Tax credits would further add to this burden by taking money from existing Federal education programs, and increasing the wealth of private schools.

Further, any reduction in enrollment caused by upper middle class students leaving the public schools would result in additional loss of revenues from State sources, as such support is based on the number of students actually attending the public schools.

Three, private school students already receive approximately \$58 per student from the Federal Government. If an additional tax credit up to \$500 were given to families of private school students, each private school child would receive 4½ times the amount each

public school child receives. We are talking about Federal support here.

Four, tax credits will become simply an indirect form of institutional aid. Using the taxpayers as a conduit, schools could increase their charges to capture a portion or all of the benefits.

Five—

Senator PACKWOOD. Let me ask you a quick question, right there. Do you object to the money that private schools get now?

Ms. BAISINGER. No; we do not.

Senator PACKWOOD. Why?

Ms. BAISINGER. We think it is a fair balance.

Because these moneys are going for school lunch programs and for title I programs.

They are going directly to children—services for children.

Senator PACKWOOD. So if we could direct the benefit of the tuition tax bill directly to children, you would support it?

Ms. BAISINGER. We would suggest that if the proposed budget cuts of 25 percent to 30 percent were not enacted, there would be more for all, both public schools and the private schools.

Senator PACKWOOD. Then, 3 years ago when we had the testimony on this bill, and you were here, were we vastly expanding the money on public education.

But you were still opposed to this bill.

Ms. BAISINGER. Yes, and we will continue to be opposed to this bill as long as the Federal policy will be to give to private schools more money per student than the Federal Government is giving to those children attending public schools.

And for a variety of equally significant reasons, not the least of which is the fact that private schools do not have to admit all children.

I was dismayed that you did not ask the question of the panel members in front of me whether their policies included children in their enrollment that are handicapped, that are bilingual, that have all of the discipline problems of the public schools, the SLD children. It is one thing to enroll minority children. It is another thing to take all children.

Tuition tax credits would work to create a caste system of education wherein many of the advantaged children would end up in private schools. And the rest of the Nation's students, including those of middle and lower income families and those who need special education programs considered too costly by most private schools, would be left to attend underfinanced public schools.

To go back to the early days, the colonial days, the practices and the policies of which have been referred to by committee members, would mean that the public schools would become pauper schools, or schools simply supported by charity.

Six, the question of free choice is illusionary. Under tuition tax credits, it is not the parent or the student who solely has the right to choose, rather it is the school who has the right to select and reject students.

In the late 1970's it was argued that parochial schools were under such fiscal strains, that they faced massive tuition increases in order to survive.

This, in turn, was driving away most of their pupils, and in many cases forcing to close parochial schools. Just recently, however, in the Washington Post, in the religious section, Saturday, March 14, we read: "Parochial school not only surviving but thriving." So I would suggest that you take a good, hard look at the current situation of our private and parochial schools.

Mr. Chairman, the National Coalition for Public Education contends that the principle of tuition tax credits does a great disservice to public education, has little to do with educational quality, subsidizes the choice of more affluent taxpayers able to afford private schools, and averts the most important duty of government, which is to provide public education.

The demand that a small minority be financially rewarded for not using free, public education, in addition to receiving exemptions from prevailing educational and social policy has no legitimate place in public thinking.

In summary, Mr. Chairman, I ask you.

What is the public really buying, should tuition tax credit legislation be enacted?

We believe the public would be buying an education for the affluent, since there are no means test.

The public would be buying, for some, the opportunity to escape and establish single-purpose schools. And the public would be paying for special privilege schools that do not have to adhere to such social policies as open admission, due process, civil rights, and accountability to the public.

Thank you for allowing the National Coalition for Public Education to testify.

Senator PACKWOOD. Claudia Waller.

#### STATEMENT OF CLAUDIA WALLER, ALEXANDRIA SCHOOL BOARD ASSOCIATION

Ms. WALLER. Good afternoon, sir.

I'm Claudia Waller, a member of the Alexandria City School in Virginia. And I'm testifying on behalf of the National School Board Association.

Our testimony today speaks in complete opposition to S. 550, and the concept and application of tuition tax credits for elementary and secondary education.

Mr. Chairman, since our focus is on the future of public education, our reasons for opposing tax credits are based primarily on the argument that tuition tax credits undermine the principle of America's traditional system of universal, free, public education.

Public education is critical to a democracy and responsible for America's leadership. After all, public education has been a success and the foundation for our country's progress. More than developing a national wealth of leaders, inventors, and scholars, the public schools have educated the people in the values, knowledge, and obligations required of a democracy.

The quality of this educational opportunity has been a springboard to participating in other rights in our democratic society.

Whether the right to vote, the right to own property, or the right to employment opportunities are meaningful for all citizens is contingent on a basic quality education provided by our public school

systems. As our Nation has met the challenges of industrial development, the space age, social equality, and reindustrialization, the public schools performed a crucial role.

Our free universal public school system has provided more social mobility and a higher general level of education than exists in any other country in the world.

Accordingly, we feel positive efforts should be made to improve the public schools for the future. A proposal such as tuition tax credits for private school parents would threaten all of this progress.

The United States is a nation which was founded, and which thrives on, egalitarian principles.

The universal right to an equal educational opportunity is fundamental to those egalitarian principles. The Federal role over the past 15 years has attempted to financially assist local school districts in providing for the special high cost services which educationally disadvantaged, handicapped, or limited English-speaking children need to assure their equal educational opportunity.

In reviewing the administration's overall education request, the Federal Government is being asked to turn away from its current support of egalitarianism in two respects.

First, the administration is requesting massive budget cuts to programs which fund the equal opportunity of special populations.

Second, through tuition tax credits, it is encouraging the creation of a dual school system, that is, private schools for upper income children whose parents can afford to pay the cost of tuition in the first place, and public schools for those children who are unacceptable to the private schools and whose parents cannot afford to pay the initial tuition costs or wait the period of time to receive the tuition credit.

Tax credits could further undermine public education by encouraging enrollment shifts to private schools. A tax credit in the amount of \$250 per student, as suggested in S. 550, is often a substantial portion of the cost of a private elementary or secondary school.

Hence, parents who might otherwise have kept their children in public schools might be more likely to take advantage of the tax credit and place their children in private schools.

This could accelerate and exacerbate the serious enrollment decline already underway in our public schools.

Another problem enrollment shifts create is the loss of voter support. Local property taxes—which on the average account for 48 percent of total school revenues—are highly sensitive to voter reactions. One reason is that taxpayers do not vote on Federal and State budgets and therefore express general antitax sentiments through school budget votes.

Education is supported by this definable constituency of users. If tuition tax credits attract a significant number of students into private education, voter support for school funding could be very seriously jeopardized.

And it will become increasingly difficult to pass reasonable school budgets.

One final point I am going to make today to substantiate the argument that tuition tax credits undermine the principles of

public education is that tax credits provide private schools with an unfair competitive advantage over public schools.

Most States have compulsory school attendance laws, and free public education is the way our society seeks to provide all children with their birthright of equal educational opportunity.

And, the 16,000 local school boards in this country are charged with making this birthright a reality.

Private schools, on the other hand, have far more leeway in determining whom they let in and whom they keep out.

Private schools can choose to admit only the brightest students, those without discipline or language problems, and those from affluent families.

Additionally, public schools must abide by laws and court decisions that many private schools can often ignore.

In conclusion, in opposing this new policy direction, the point is not whether private schools should exist—or even flourish.

The point is whether the Federal Government should transform its current policy to insure equal opportunity for special populations into a private school general aid program which, by design, promotes a dual system for educational opportunity.

The Federal Government should not, as a matter of policy, position itself to deprive special populations of their opportunity to participate and at the same time promote a situation which will result in fulfilling the general failure of the public schools for all its students.

In sum, for most Americans, the opportunity to participate in—and to contribute to—our society starts with an education.

Federal tuition tax credits as an approach, and especially in tandem with proposed budget cuts, undermine the public schools as a universal harbor for equal opportunity—and offer no such harbor in return.

Senator PACKWOOD. Ms. Waller, the argument is frequently raised, as to how much money the Federal Government pays to public education, how much they pay for private education now, and how this would leap frog the amount we pay for public.

Don't you think it is fair to take into account, the amount of public dollars that go into education, and count the State and local dollars?

If you are talking about how much public money goes for education, infinitely more of it goes for public education than private education.

Ms. WALLER. What we are talking about here, though, Senator, is Federal funding.

Senator PACKWOOD. I understand that.

Ms. WALLER. We are trying to make the comparison in Federal funding for private and public education.

Senator PACKWOOD. Does that mean, because as you know, Louisiana has a tuition tax credit bill—does that mean if this were a State bill, that argument would no longer adhere. If they wanted to give a \$200, \$300, or \$400 tax credit, that still wouldn't be near what—

Ms. WALLER. In fact, the problem that I see in Louisiana is that there is definitely a dual school system in Louisiana. And there are far more private educational institutions than there are public.

And there is definitely, and I don't have figures in front of me—but I have been told—serious problems of segregation in the State of Louisiana, because of the multiplicity of private institutions that serve small populations.

Senator PACKWOOD. But the argument I'm trying to piece together is whether or not your opposition to this bill would continue if Federal Government provided no more in tuition tax credits than we give to the public schools in terms of our appropriations.

Ms. WALLER. Yes, it would

Senator PACKWOOD. You would still be opposed?

Ms. WALLER. Yes.

Senator PACKWOOD. So that really isn't the argument against it?

Ms. WALLER. The argument, basically, is that we feel that it is a bad concept.

Senator PACKWOOD. OK, that is fair enough.

I mean, that is a good philosophical difference.

But it isn't really one based on money.

Ms. WALLER. Money certainly plays a part.

Senator PACKWOOD. But you are saying that no matter what the money is, you would still oppose it.

Ms. WALLER. Yes.

Senator PACKWOOD. OK, then money is not the point.

Isn't that true?

Ms. WALLER. It is definitely a part of it.

I can't exclude one from the other.

Senator PACKWOOD. Now the statement you made, and again I want to get the statement correct—is based or cited the costs at Georgetown Day and Sidwell Friends, for those are exceptional school with high tuition.

It indeed, is true that the bulk of tuition for most private schools in this country is relatively low, isn't it?

You have that statement in your—

Ms. WALLER. From all the research that I have done, Senator, the low-cost institutions are primarily church related.

And those then have subsidies either from the parish support or fundraising operations or something else.

Senator PACKWOOD. Well, it is unfair—that is exactly what I'm getting at—to say, "Well, it's going to aid the rich." Which, indeed, it is not the rich that go to most of the private schools in this country.

You made the statement on page 3 of your testimony:

A credit in the amount of \$250 per student, as suggested in S. 550, is often a substantial portion of the cost of a private elementary or secondary school.

Which is indeed true.

Ms. WALLER. The problem is—is that they can't afford it at the onset.

Senator PACKWOOD. Well, if they can't afford it, then the tuition tax credit won't do them any good anyway.

Ms. WALLER. I have some figures here from a research project that was done by the Institute of Education in Stanford, just recently, which gives the cost and distribution of tuition tax credits based on family income and the percentage of non-public-school families in each category. It shows that 80 percent of the numbers

of children attending nonpublic schools have family incomes over \$15,000.

Senator PACKWOOD. We have a breakdown, also, from the Congressional Budget Office, which is already part of the record.

But what I'm trying to establish now is that the bulk of these schools have relatively low tuition. And I will cite, and if you want to quarrel with this figure, you can, because I do not know the source for Dr. Bell's statement—he does not have a footnote.

Ms. WALLER. Can I ask one question about those figures?

Do any of those take into account what the requirement for salary is in those schools?

Senator PACKWOOD. Oh no, of course not.

They do not.

He said "In 1979, the median," and I understand exactly the use of the word "median," "private elementary school tuition was \$360 per year."

Now, do you have any reason to quarrel that—to quarrel roughly with that figure?

Ms. WALLER. No. I don't have any facts or figures to dispute it.

Senator PACKWOOD. No; I don't either.

But my hunch is, based upon talking with some of the diocesan leaders and the fact that most of the schools are religious schools, and realizing that is a median figure—that may not be far off.

That is 1979, not 1981.

If I were to take a guess, I would bet the median today may be \$400 or \$450, or something like that.

Ms. WALLER. I should tell you, Senator, that I have a child in a parochial school, as well as three in public school.

And I'm familiar with the approaches on both sides. The child in parochial school pays a rather high tuition at this point, because it is in this area.

But we are also hit up on a daily basis for other fees—transportation, we pay for textbooks—the church supports the school, and I don't believe that the school that he attends is much different than any other.

Senator PACKWOOD. And I should tell you that I am a total product of public schools. And my two children go to public schools. And I have no intention of moving to a private school, sectarian or otherwise.

Ms. WALLER. We do what we have to do.

Senator PACKWOOD. I have no other questions.

Let me say, by and large, all of your testimony is very good. It is very factual, very sound, and it is the kind of testimony that I know Pat Moynihan would appreciate if he was here, even though he would disagree with the conclusion.

But it is very soundly based, and I appreciate your research on it.

Thank you very much for coming.

[The prepared statements of the preceding panel follow:]

## SUMMARY

TESTIMONY OF  
 JEANNE SILVER FRANKL, CHAIRPERSON  
 NEW YORK CITY CITIZENS AGAINST TUITION TAX CREDITS  
 BEFORE THE  
 UNITED STATES SENATE FINANCE SUBCOMMITTEE  
 HEARINGS ON  
 TUITION TAX CREDITS

Thursday, June 4, 1981

The NEW YORK CITY CITIZENS AGAINST TUITION TAX CREDITS, a coalition of influential civic organizations, church groups, labor unions and parent organizations opposes §550 because we feel it will fundamentally change the quality and fabric of American society.

Tuition Tax Credits will initiate a new policy of educational separatism by providing support for sectarian privately established institutions. We suggest this could lead to very different results than some of the legislation's well-intentioned supporters have imagined. Any religious cult or ethnic or political group could establish and obtain federal underwriting of its own school.

We share the concern expressed in S.550 that personal liberty, diversity and pluralism constitute important strengths in American education. But these are strengths that grow out of our present public education system. The mission of universal education which the public schools undertake to perform is central to the idea of our society. And recently the public schools have been doing remarkably well. In New York City, for example, we observe a new commitment to achieving higher standards of education for all. Our reading scores have gone up significantly in each of the last two years. This year, we exceed the national average, with gains registered in each of our community school districts for all racial, ethnic and socio-economic groups.

Tuition tax credits represent a major change in public policy. Aside from being inflationary, they are also unfair to public school parents. Per capita the contemplated tuition tax credit expenditures for private school students will be triple what is now being spent on each public school child. This is clearly not a shift in the direction of educational equity.

Tuition tax credits also call into question the federal government's role in public and private education. They represent an increase rather than a curtailment of federal intervention in educational affairs. They would establish a policy of public support for private education reaching into every state and affecting every public education system, parent and taxpayer in the nation. Polls report that 64% of the public opposes tuition tax credits. Yet all of us would have to pay for them.

They are, moreover, plainly unconstitutional. This is clear not only from the decisions of the Supreme Court in considering almost identical state measures, but by application of the standards which the Court applied in reaching those decisions. The only distinction between the



SUMMARY - p. 2

tuition tax credit and a direct, unrestricted grant to the religious schools that will be its primary beneficiaries is that S.550 aid must pass through a parent. That this is a distinction without a difference is self-evident and has been confirmed by the Supreme Court.

Tuition tax credits also violate constitutional prohibitions against enhancing religion and entangling the government with religion. Furthermore, we are particularly sensitive of the potentially divisive effect, cited by the Supreme Court, of an aid program which pits public against parochial schools in competition for funds.

Some of Senator Moynihan's comments about S.550 focus on the fundamental problem with this legislation. He makes it clear that the only purpose of the bill other than the impermissible one of supporting parochial education is the equally impermissible one of financing schooling for the rich at the expense of the poor.

Current romanticism about private schools ignores the fact that for every excellent example there is a school which does a poor job of teaching both American values and the 3 R's. People who think we can scrap the painstaking efforts to refine and improve public schooling in the hope that private institutions will assume our long-standing burden are unrealistic. It is a great temptation to desert our commitment to public education on the glamorous promise that a new and untried system will meet the needs and avoid the problems of the old. New systems don't work, however, until they are tried and all kinks taken out. We've been taking the kinks out of public education for a long time. It serves millions better than ever before. This is no time to try a so-called panacea.

6/4/81

TESTIMONY OF  
JEANNE SILVER FRANKL, CHAIRPERSON  
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TUITION TAX CREDITS

Thursday, June 4, 1981

I am the Executive Director of the Public Education Association of New York City, the oldest group in the nation established to represent citizens' concern for quality education. I am here today as chair of NEW YORK CITY CITIZENS AGAINST TUITION TAX CREDITS, a large and growing coalition of influential organizations and individuals. Our coalition includes civic organizations, church groups, labor unions and parent organizations representing well over 400,000 parents, 80,000 teachers, 3,000 administrators, and thousands of just plain concerned citizens.

The genius of our country is that it has united people of different religious and national origins to a degree unparalleled in history. Our public schools have been the chief instrument of this extraordinary accomplishment.

Under the banner of fostering diversity and choice for Americans, S.550 would erode the nation's support of a public education system which is genuinely diverse.

We share the concern expressed in S.550 that personal liberty, diversity and pluralism among our children constitute important strengths in American education. But these are

strengths that grow out of a public education system that serves children of all races, groups and creeds. Pluralism is not achieved through proliferation of sectarian institutions, ~~separatist education systems~~ devoted to serving a single group or perpetuating a single idea. Public finance for this kind of "pluralism" is not a legitimate public purpose. The experience of other foreign countries with more homogeneous population demonstrates that separatist education systems are the foundation for analagous social and political movements.

Our coalition does not believe that this bill will serve its second expressed objective of fostering educational opportunity. At the present time, the public schools are charged with educating 90% of America's children. Tax credits will encourage people to pursue private alternatives and the impact will be to undermine support for public education.

The groups that I represent know as well as anyone the strengths and deficiencies of public efforts to educate urban children into productive citizenship. But as you consider whether or not to support S.550, you must ask whether we can afford to detract from the public schools' ability to do this job.

The mission of universal education which the public schools undertake to perform is central to the idea of our

society. As we see it, it is twofold -- to educate all children in a country of 200 million people and to educate them to the best of their capacities.

Although the path is not always smooth, the public school systems of this country perform these responsibilities remarkably well. We tend to forget that the public has enlarged its educational expectations dramatically in this century. The potential of the public schools is revealed by the degree to which they have met rising expectations. At the turn of the century less than 7% of students graduated from high school. This figure remained less than 40% until the late 1940's and had reached only 60% in 1954. Today the proportion of 17 year olds who graduate from high schools nationwide is more than 75%.

Moreover, we have come a long way from the day when success in school was reserved to special groups.

In 1950, 35.5% of the over 25 year old population had completed 4 or more years of high school. Only 13.4% of black and non-white groups were so fortunate. In March, 1978, 50.6% of blacks over 25 had at least 4 years of high school. In other words, the gap has dramatically narrowed.

The public school system has learned a great deal in recent years about how to do this job better. Experiments with new approaches and techniques, and more important, studies of their outcomes are beginning to bear fruit in better understandings of how to achieve the public sector's

educational goals. For example, recent evaluations have shown that Title I remedial reading programs have led to solid gains in achievement. Nine year olds overall are scoring 4% higher than a decade ago, and blacks 10% higher.

Last week, the New York Times reported the success of "a growing assortment of federal, state and local programs... assembled to concentrate on ameliorating learning deficiencies before their cumulative effects become irreversible."

In New York City, we observe a universal and newly focused commitment by all participants in our school system to achieving higher standards of education for all. Recent years have seen modernized school management with cuts in administrative costs and assignment of a greater proportion of the expense budget to classroom teaching. The schools are engaged in concentrated programs to improve students' basic skills, and a new promotional plan is designed to assure that children attain grade level in reading and math before moving to higher grades.

Reflecting this push, our reading scores in New York City have gone up significantly in each of the last two years. This year, we exceeded the national average, with gains registered in every single one of our community school districts for all racial, ethnic and socio-economic groups. In addition, 49.6 percent of our youngsters were at or above grade level on a citywide mathematics test.

Tuition tax credits would mean an enormous shift away

from public education of the resources which have made it possible for us to do this job. Congress should not be misled by the relatively small dollar amounts of the credits into thinking that this is less than a major change in public policy.

S.550 contemplates a \$5 billion expenditure in the first year and \$10 billion in the second if the private enrollment remains exactly as it is today. That large an expenditure is inherently inflationary. If even a relatively small percentage of students transfer from public to private schools, the cost will rise dramatically. Coming at a time when the budget and taxes are both being cut, this program would increase the national debt and further unbalance the budget. Potentially, there is no end to the escalation of these optional benefits for those encouraged by their availability to choose private schools.

Tuition tax credits are also unfair to public school parents. Per capita the contemplated tuition tax credits expenditures will boost federal commitment to private school children to an amount triple what is now being spent on each public school child.

If the private school population were to grow to 25% of all students from its current 10%, the cost of tuition tax credits would be more than the total amount the federal government now spends on public education.

It is very clear that this is not a shift in the direction of educational equity. The private schools cannot take on the job which the public schools are now doing.

There is another, and, in the minds of many, most important issue at stake in this proposed measure--the proper role of the federal government in public and private education. Enactment of federal tuition tax credits simply cannot be reconciled with the professed interest of this Congress and Administration in curtailing the federal role in educational affairs.

It seems as if we have a very short memory, completely forgetting that little more than two decades ago, many people opposed any federal action on education issues. People of all political persuasions were concerned then that federal involvement would lead to unwanted federal control of educational policy. The first federal intervention came only in the 50's after decades of debate and resistance when Sputnik sparked a reluctant commitment to act in furtherance of better scientific and vocational programs. The next major federal action waited until the 1960's when concern over poverty and civil rights committed federal money to state-devised programs addressing the special needs of poor and minority children in the schools.

Now, while promising to curtail federal intervention by converting to block grants, diminishing dollar support and other expedients, supporters of tuition tax credits propose the most substantial federal intrusion into educational policy that has yet occurred. Federal enactment of tuition tax credits for private school parents would establish a

policy of public support for private education reaching into every state and affecting every public education system, parent and taxpayer in the nation. Polls reports that 64% of the public opposes tuition tax credits. Yet, all of us would pay, whether or not we or our states or cities support the premise. The effect on both federal and state commitments to public schools which would inevitably flow from this commitment would be felt either in greater burdens on the taxpayer, diminished public school service levels or both. Certainly these are innovations of sweeping importance which will change the face of American education. But education is a state function, and these are therefore innovations of the kind in which this Congress above all has pledged not to engage.

They are, moreover, plainly unconstitutional. This is clear not only from the decisions of the Supreme Court in considering almost identical state measures, but by application of the standards which the Court applied in reaching those decisions. In Lemon v. Kurtzman, Committee for Public Education v. Nyquist and other cases, the Court has made clear that to avoid the constitutional prohibition against establishment of religion, a parent aid or school aid measure must:

- 1) reflect a clearly secular purpose
- 2) have a primary effect which neither enhances nor inhibits religion, and
- 3) avoid excessive government entanglement with religion.



The measure proposed here like the virtually identical tax credit provision held unconstitutional in the Nyquist case clearly fails on the last two grounds. Indeed, we are affronted that the Congress should seek to precipitate a reargument of this settled question through a legislative proposal which so clearly violates not only the letter but the spirit of the constitutional prohibition. S.550 does not even avoid infringing the church-state barrier by precisely targeting payments on secular, ancillary or educational services. The aid it proposes is not restricted to non-religious textbooks, school buses, remedial reading or athletic programs.

As the Court noted in Nyquist, "[t]here has been no endeavor to guarantee the separation between secular and religious educational functions and to ensure that [government] financial aid supports only the former" (413 U.S. at p. 783). S.550 contemplates plenary aid unconstrained in its use. The only distinction between the tuition tax credit and a direct unrestricted grant to the religious schools that will be its primary beneficiaries is that S.550 aid must pass through a parent. That this is a distinction without a difference is self-evident and has been confirmed by the Supreme Court.

The very purpose of this law, as stated by one of its chief sponsors, is the enhancement of religion in violation of the second constitutional test. Thus, Senator Moynihan stated in the Congressional Record (Feb. 24, 1981) that

"[t]he object of tuition tax credits is to prevent further decline..." in the "number and...enrollments" of "the parochial schools, that is the neighborhood schools, almost always associated with a church or synagogue...." Factually, this statement was incorrect and outdated, failing to note that the numbers of parochial schools have been growing, not declining, since 1975 and failing to acknowledge the recent pell mell increase in religious schools. However, the statement makes very clear that further increasing the numbers of such institutions is the goal of S.550.

Of course, the very purpose of parochial schools is to enhance religion, a motive with which we quarrel only if public funds are unconstitutionally used to further that end. Since S.550 provides funds without limitation as to use by parochial schools, the funds would be made available for religion-enhancing purposes in direct violation of the second constitutional test.

The credits would also violate the third, or "entanglement" test. The monitoring required simply to assure that those who apply for the credit are entitled to it and have not overclaimed the amount will involve an ongoing and prohibited degree of entanglement between the federal government and religious institutions. We are even more sensitive to the potentially divisive effect, cited by the Supreme Court in this connection, of an aid program which pits public against parochial schools in competition for funds. In our

view the constitutional doctrine which prohibits legislation that will give rise to such sectarian battles is wise public policy as well as the law of the land.

Some of Senator Moynihan's comments about S.550 focus on the fundamental problem with this legislation. I say this with deference both because of Senator Moynihan's intellectual distinction and the candor with which he has discussed the proposal. This very candor makes clear that the only purpose of the bill, other than the impermissible one of supporting parochial education, is the equally impermissible one of financing schooling for the rich at the expense of the poor.

On February 24, Congressional testimony by the Senator pointed out that the schools other than parochial which would benefit from the legislation were "private schools for upper-income families, schools resembling and often modeled on the English public schools...."

"Just at present," he added, "the number of such schools is growing." It was also at that time that he perceived parochial schools as declining. Thus, he affirmed what we all know--that if tuition tax credits serve the 10% of children currently in private schools, they will primarily serve the well-to-do. If, on the other hand, the legislation has the effect which some predict of drawing more children into private education, it will expand the parochial system at the direct expense of the public systems the children now attend.

This is legislation with no legitimate public purpose, and a lethal potential for detriment to existing public ends. The federal government, particularly in these times, cannot support two education systems--a private and a public one. Neither can the states, which will sustain great pressure if this legislation is passed, to enact tuition tax credits of their own. The inevitable effect of refocusing governmental educational commitments will be to starve the already hard pressed public systems at a moment when they are sustaining both greater demands and greater success in meeting them than ever before.

We cannot afford to do this. Senator Moynihan recognizes as much in a package linking his tuition tax credits bills to vastly expanded aid for public education. But we know this package will not be passed when we have just slashed public education aid by 25 percent. Tuition tax credits make no sense at a time when the federal government's commitment to education aid to the public schools has been reduced.

This makes it essential to stress the obvious in that whatever the virtues of some of the private schools now serving 10% of the nation's children, they cannot be expected to make a substantial contribution to the job of educating the other 90%. Leave out for a moment the problem of their exclusivity -- the fact that even those purporting to have policies of socio-economic and racial integration exclude the difficult, the handicapped, the bilingual, the hard-core poor. Leave out the fact that S.550 specifically exempts

affected schools from federal prohibitions against racial segregation and discrimination of women. It is naive to think that the basic job of educating this nation's 44 million children can be done other than by strong, state- and locally- monitored systems of public schools.

Current romanticism about private schools ignores the fact that for every excellent example there is a school which does a poor job of teaching both American values and the 3 R's. It forgets that state standards for public schools are stricter than those for the private, which some states do not regulate at all. Increasing numbers of private schools lack the accomplished staff, the full curricula, the health and sanitary facilities, libraries, and criteria for graduation necessary for effective education. As private schools are more heavily relied upon to educate more children, these problems will not diminish but increase.

People who think we can scrap the painstaking efforts to refine and improve public schooling in the hope that private institutions will assume our long-standing burden are unrealistic. It is always a great temptation to desert an anxious and difficult commitment -- like public education -- on the glamorous promise that a new and untried system will meet the needs and avoid the problems of the old. ~~New~~ systems don't work however, until they are tried and all the kinks are taken out. We've been taking the kinks out of public education for a long time. It serves millions better than ever before. This is not the time to try a so-called panacea.

MEMBERS  
NEW YORK CITY CITIZENS AGAINST TUITION TAX CREDITS

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1. United Parents Associations
2. Public Education Association
3. United Federation of Teachers
4. 100 Black Women
5. New York City Urban Coalition
6. Council of Supervisors and Administrators
7. Association of New York City School Superintendents
8. Association of Community School Boards
9. New York City School Volunteers
10. Local 372, District Council #37 - AFSCME
11. Women's City Club
12. Public Education & Religious Liberty (PEARL)
13. Advocates for Children
14. United Community Centers, Inc.
15. Civil Services Technical Guild, AFSCME, AFL-CIO
16. Ad Hoc Committee to Save Our Schools
17. Community Planning Board #2
18. Jewish Labor Committee
19. Queensboro Federation of Parents Clubs
20. President's Council - District #20
21. President's Panel - District #24
22. Southwest Queens Educational Alliance
23. Staten Island Federation of PTA's
24. Community School Board #24
25. Students Coalition To Save Our Schools
26. P.S. #205 - Queens
27. A. Philip Randolph Institute
28. Community School Board #6
29. Community School Board #17
30. Community School Board #13
31. District Conference of P.A. Presidents of District #22
32. Brooklyn Federation of High Schools
33. Social Action Committee of Community Church of New York

Members, NYC Citizens Against Tuition Tax Credits (cont'd.) - p.2

34. Union of American Hebrew Congregations
35. Workmen's Circle
36. American Jewish Committee
37. Metropolitan Division American Jewish Congress
38. Retired School Superintendents Association
39. New York Civil Liberties Union.
40. Delta Sigma Theta
41. PTA - P.S. #104, Brooklyn

and numerous individual concerned citizens

6/4/81

TESTIMONY OF THE

NATIONAL COALITION FOR PUBLIC  
EDUCATION

IN REGARD TO TUITION TAX CREDITS

BEFORE THE

SENATE FINANCE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

U.S. SENATE

JUNE 4, 1981



Mr. Chairman and Members of this Subcommittee. I am Grace Baisinger, Chairperson of the National Coalition for Public Education. The National Coalition for Public Education, comprising over 40 civic, civil rights, educational, labor and religious organizations with a constituency of over 70 million members, is unified in its effort to defeat tuition tax credit legislation. Enactment of a tuition tax credit would be a debit to our society, our schools, and our tax system. A debit that we can ill afford in dollars and cents, and a debit which sound public policy-as well as sound public schools-demand we reject. Although the forum for our discussion this ~~afternoon~~ <sup>morning</sup> is national, the effects will be felt in every classroom and every community in the country should tax credits become a law.

Tuition tax credits are designed to be deceptively simplistic. Yet upon examination, this simplistic appeal disappears when measured against the severe budgetary, policy, and constitutional impact that tax credits would have on public schools. If the government is to support non-public schools, directly or indirectly, the very reasons for which we have publicly funded schooling must be addressed. We assume that the funding of our system of universal free public education has been based on the belief that education generates social or public benefits, and that it is the government's responsibility to assure adequate funding and financial support. Public control and public funding of schools have grown from this premise.

## TUITION TAX CREDITS WILL UNDERMINE FINANCIAL SUPPORT FOR PUBLIC SCHOOLS

- TUITION TAX CREDITS WOULD PROVIDE SPECIAL BENEFITS TO ONLY A FEW.

Though couched in the language of tax relief, tuition tax credits provide special benefits to only approximately 10% of the population at a cost of more than \$4.7 billion a year. That is enough to give every state an extra \$100 million educational dollars a year, but not for public schools. That is an amount equal to one-third of the U.S. Department of Education's budget, in addition to public monies and services private schools already receive from state and local sources.

- WHO WOULD BENEFIT FROM TUITION TAX CREDITS. The National Coalition finds it unconscionable that the Administration advocates tuition tax credits, which would primarily benefit upper income families, at the same time that it proposes making false economies at the expense of our neediest school children in the form of drastic budget cuts. The National Coalition finds it equally unconscionable that the federal government would adopt a program of general assistance for private school parents sending their children to such schools as Sidwell Friends (\$4,000 a year tuition), Georgetown Prep (\$3,860 a year tuition) or Congressional (\$2,230 a year tuition) and at the same time cut aid for programs targeted at special student populations. This is Robin Hoodism in reverse, taking from the needy and giving to the rich.

According to the Congressional Budget Office, lower-income families would benefit less from tuition tax credits. Because lower income families do not pay large taxes, they would generally receive only a limited benefit through a tuition tax credit. In the extreme, the most needy families would have such low incomes that they would pay no taxes and thus receive little benefit from the credit. Furthermore, being reimbursed a year in the future would not expand opportunities if no resources were available to meet

immediate expenditures. The following general observations can be made:

- With regard to national patterns, non-public school attendance rates have been higher among the nation's elementary school students. In 1978, 11.4% of all elementary school children attended private schools, compared with 8% of high school students.
- With regard to regional patterns, 1978 data indicates that private school attendance rates remain highest in the northeastern and north-central states and lowest in the South and West. Tuitions vary significantly across the nation, with students in the South and West paying more to attend private schools than their counterparts in the northcentral and northeastern regions. This pattern probably reflects the dominance in the northcentral and northeastern states of Catholic parish schools which receive relatively large church subsidies and charge low tuitions. Of the nation's 19,663 private schools, 9,848 are Catholic, 5,870 have other affiliations, and 3,944 have no affiliations.
- With regard to the patterns of race, and despite recent increases in non-public school enrollment among Blacks and Hispanics, pronounced differences exist in non-public school attendance rates for students of different racial and ethnic backgrounds. Differences between Black and White students are especially large with private school attendance rates among White students nearly three times higher among Black students.

#### Elementary Nonpublic Attendance Rates (%)

White	12.6%
Spanish	9.9%
Black	4.6%
ALL	11.8%

#### Secondary Nonpublic Attendance Rates (%)

White	9.0%
Spanish	5.0%
Black	2.9%
ALL	8.0%

#### Racial Composition of Enrollment:

	White	Black	Other
Public	82.5	15.7	1.8
Private	91.8	6.4	1.8

Sources: *Current Population Reports*, P-20  
Series, #333, October 1978,  
#319, February 1978.

- With regard to pattern by family income, an objection often raised against tax credits is that they would be regressive, since children from the wealthiest families tend to be over-represented in the private school population. 1978 data indeed reveals that the likelihood of attending private school increases sharply as family income rises. Thus, private school attendance rates for students from families with \$25,000 or more are about five times higher than the rates among children from families with incomes of less than \$5000.

**Percent of Enrollment by Income Class of Family, 1976\***

	<b>Income Classes</b>					
	<i>Below \$5000</i>	<i>\$5000- 9999</i>	<i>\$10000- 14999</i>	<i>\$15000- 19999</i>	<i>\$20000- 24999</i>	<i>Over \$25000</i>
<i>Elementary</i>						
Public	13.2	21.3	24.2	14.4	9.8	8.9
Nonpublic	4.8	11.7	26.1	20.9	11.4	18.2
<i>Secondary</i>						
Public	9.7	17.5	22.8	16.1	12.5	12.4
Nonpublic	3.2	10.2	17.3	17.0	17.9	23.8

\*Source: *Current Population Reports, P-20 Series No. 319, February 1978, Table 14.*  
Rows do not sum to 100 percent due to incomplete reporting.

o TUITION TAX CREDITS WOULD PROVIDE A DISPROPORTIONATE SHARE TO PRIVATE SCHOOL STUDENTS. Currently, the federal government spends approximately \$160 per year for each public school child, and approximately \$58 for each private school child. These monies are allocated on the basis of identified student needs such as aid to disadvantaged children, the handicapped, and school lunch, and are designed to supplement existing programs. Private school children receive fewer federal dollars (although they are eligible on an equal basis with the public school children) because private schools are selective and enroll fewer "high" needs students.

S.550 would change all of this. First, it proposes credits of \$250 and \$500 which exceeds the present amount spent on public school students and establishes an extreme disproportion. Secondly, S.550 responds to the needs of private school parents rather than the targeted and specific needs of children. This is a major shift in policy and lays the groundwork of federal assistance

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based on alleviating the economic strains of parents who make private decisions to send their children to private schools. This reduces the federal commitment to children with special needs and creates a disproportionate response to only the few who send children to private schools. With a federal revenue loss for education of the magnitude of tuition tax credits, it seems unlikely Congress would support adequate increases in categorical programs aimed at students who need the most help.

● TUITION TAX CREDITS WOULD REDUCE FEDERAL FUNDING FOR EDUCATION.

On the National Level. Drastic reductions in current federal educational programs and school lunch has the effect of reducing federal funding for public schools, while increasing support for non-public schools. It is inconceivable that at a time when the Administration and Congress are laboring to reduce the federal budget more in such areas as social security, food programs for the poor, special education, aid to the disadvantaged - that any proposal for a major new tax subsidy primarily benefitting higher-income taxpayers would even be considered.

On the State and Local Levels. Returning responsibility to state and local governments is a central theme of the Administration. The Reagan budget, however, fails to provide state and local governments with money needed to exercise this new responsibility. The National Governors Association estimates that the Reagan budget cuts will reduce federal grants to state and local governments by 13.4%. According to the National Governors Association, this sum is \$14.6 billion below the amounts needed to maintain services at current levels. These cuts will mean either higher taxes at the state and local levels or a reduction in services. How is it possible to subsidize private schools when many public schools and services are

fighting for their financial survival, especially when federal resources must serve other than education needs. Over 80% of school funding is derived from the state and local level. As a result of tax limitations such as Proposition 13 in California and Proposition 2½ in Massachusetts, many public schools are being forced to drastically cut back on program and staff. Tuition tax credits would serve to support private schools at the expense of public schools which are faced with eroding resources and tax limitations.

• TUITION TAX CREDITS WOULD BEGIN A CYCLE OF UNCONTROLLABLE COSTS.

Since anyone deemed eligible could receive the tax credit, the number of recipients cannot be controlled. The cost each year could escalate drastically as more people apply and as tuition increases. Increased tuition will be certain to create more pressure for increased credits. Hence, the tuition tax credit subsidies will fall into the same pattern of uncontrollable escalation of costs that the Administration is now so concerned about in other federal programs. As a case in point, S.550 begins with a maximum \$250 credit the first year with an increased maximum to \$500 the following year. This pattern would suggest even higher credits beyond that amount in future years.

IMPLICATIONS FOR EDUCATIONAL POLICY

The public policy implications of tuition tax credits are as far-reaching as the budgetary implications. To what degree are the public and social purposes of education achieved in the nation's non-public schools is a fundamental question that brings to being the reason for public funding of public schools. America's traditional system of tuition-free public

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schools, locally controlled and serving the needs of our communities by providing education for all, has provided the base for our democracy. It is the public nature of our educational system that has shaped and molded policies for the public good. Some of these fundamental policies are:

- A UNIVERSAL SYSTEM OF EDUCATION. Providing a system of tuition-free, universal, public education has long been the cornerstone of our American democracy. The right to attend a private school is a matter of freedom of choice; the duty of the government to provide public schools is an obligation. With proper support, public education can continue to ensure the universal and fundamental right of each child, regardless of his family's income or the child's special needs to learn and succeed. If public schools are not supported, or if they are set up for a failure - as we believe tax credits can do - who will ensure the universal and fundamental right to learn?

- EQUAL OPPORTUNITY FOR ALL CHILDREN. Public education policy requires that public schools admit all who appear at its doors. Many private schools, however, have quite exclusive admissions standards which, along with high tuition costs, have the effect of excluding all but a small number of students. With the Tuition Tax Credit proposal, the costs of such schools would be subsidized -- but all taxpayers would have to pay the cost, thus forcing parents to contribute to the operating costs of schools from which their children can be excluded.

- EQUAL EDUCATIONAL ACCESS FOR ALL CHILDREN. The effect would be to create a caste system of education, a system wherein the most advantaged students would wind up in private schools. The rest of the nation's students

including those of middle and lower economic class families and those who need special educational programs considered too costly by most private schools, would be left to attend underfinanced public schools. Tuition tax credits would also provide an incentive for the increase and expansion of non-public schools in desegregated areas. In many communities the establishment of segregation academies thrived under tax exemptions despite their discriminatory practices. Recent IRS attempts to get at segregation academies have already been blocked, and one could expect little change were tuition tax credits enacted. The effect would be sanctioned segregation at public expense.

● A SYSTEM OF ACCOUNTABILITY AND REPRESENTATION THROUGH LOCAL BOARDS OF EDUCATION, STATE LEGISLATURES AND THE U.S. CONGRESS. Tuition tax credits would encourage a general assistance program subsidizing private and parochial schools that are not conceived publicly, do not have to adhere equally to federal, state and local mandates, do not have totally open admissions standards and are not officially accountable publicly to anyone for the use of public dollars. It is inconceivable that the federal government could sanction a multi-billion dollar tax credit without some mechanism for ensuring that both the school and tuition charge are legitimate. But how does the federal government determine the legitimacy of a private school? By federal regulations? By requiring a state monitoring and reporting system? Further, in terms of educational quality, if federally subsidized non-public schools do not succeed, can the federal government argue caveat emptor or will elected officials be pressured to scrutinize and ultimately regulate private schools? In terms of protecting the federal treasury and the consuming public, how long could Congress promote private education without accountability,



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yet find that public education must adhere to rigid guidelines requiring structured accountability for the expenditure of their federally connected revenues.

TUITION TAX CREDITS VIOLATE CONSTITUTIONAL PRINCIPLE OF  
SEPARATION OF CHURCH AND STATE

Apart from its negative impact on public education and the budget, tuition tax credits fail on constitutional grounds. The constitutionality of tuition tax credits, especially at the elementary-secondary level, has been widely debated. The National Coalition has been unwavering in its belief that tuition tax credits are not only bad policy but also unconstitutional. Simply stated, by advancing religion instead of secular education, tuition tax credits violate the constitutional principle of separation of church and state.

Tax credit plans cause the government to involve itself with religious schools and the church. Significant beneficiaries of tuition tax credits would be the religious schools or parishes themselves which comprise over 85% of all non-public schools. Therefore the purpose and orientation of parochial schools would probably preclude purely secular teaching within its walls, and any exceptions to the rule could only be identified by state agencies on the school grounds. Such surveillance of teaching and the materials used would constitute "entanglement" and would inevitably touch on the establishment and free exercise of religion. This would have the effect of advancing and fostering religion at public expense. The issue of the constitutionality of tuition tax credits for private elementary and secondary schools is a matter of settled law. In 1973, the U. S. Supreme Court invalidated New York state's tuition tax credit as a violation of the Establishment Clause of the First Amendment. Committee for Public Education

and Religious Liberty v. Nyquist, 413 U.S. 657 (1973). This 6-3 decision means that the Supreme Court would quite clearly strike down any similar federal tuition tax credit.

S.550 is almost identical to the New York law struck down in Nyquist. As in the New York statute, there would be no restrictions on the types of non-public institutions for which the credit may be claimed. Since 90% of the parents eligible for the credit would have children attending religiously affiliated schools, the proposed federal law, like the New York state law, would have the primary effect of advancing religion. It would be a special tax benefit whose purpose and inevitable effect are to aid and advance religious institutions. Nyquist, supra, 413 U.S. at 793. Moreover, the entanglement concerns expressed by the Court in Nyquist are greatly magnified under the federal proposal because the tax credit has a far higher limit--\$500--than the New York law which had aid up to \$50 for elementary school students and double that for high school students.

#### WHY TUITION TAX CREDITS AREN'T THE ANSWER

● PUBLIC SCHOOLS ARE A PUBLIC TRUST. Public schools are central to the life of many thousands of communities across the country in ways that non-public schools, because they are private and exclusionary can never be. It was President Lyndon B. Johnson who charged the public schools with the responsibility of "educating for the future--opening doors to the handicapped, the disadvantaged and the minorities," and the public schools responded to the needs of American society. It is not the imposition by government but the voluntary actions of individuals and associations that prompted the phenomenal growth of the common school. Public school leaders such as Horace Mann were motivated by the need to create unity in a highly

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centralized and fragmented nation. The public schools brought people together, served to enhance the melting pot, and transformed a country of immigrants into a great nation.

• STATE REFERENDA DEFEATED. In similar issues related to varying forms of parochialism, voters have consistently turned down state referenda. In the following instances, voters have been definite about their opposition to aid for private schools:

STATE	YEAR	AGAINST AID	FOR AID
Alaska	1976	54%	46%
Idaho	1972	57%	43%
Maryland	1972	58%	42%
Maryland	1974	56.5%	43.5%
Michigan	1970	57%	43%
Michigan	1970	74%	26%
Missouri	1976	60%	40%
Nebraska	1966	57%	43%
Nebraska	1970	57%	43%
New York	1967	72.5%	27.5%
Oregon	1972	61%	39%
Washington	1975	68.5%	31.5%

• THE "COMPETITION" ARGUMENT. Tuition tax credit promoters claim that tax credits would enable private schools to "compete" with public education. Public schools, the argument goes, have grown "complacent." Increased competition from private schools would force the public schools to "shape up" and do a better job.

The "competition" argument is dishonest because it ignores the very different role of public and private schools. In fact, it may be that non-public schools wish to compete for only one thing--federal dollars. Private schools educate only those children whose families select the schools and whom the school selects. Public schools take all children.

Private schools do not compete in teacher qualifications or teacher certification standards. They do not compete in teacher salaries. Private schools do not compete in offering a range of services to match all children's needs--compensatory education, services to bilingual or handicapped children and other special student populations. They do not compete in offering due-process rights to students, or in preventing discrimination covered by civil rights laws. Private schools select the students they will serve and the services they will offer them. And now they want to compete for public dollars--but without any of the public responsibilities that go with that support. A public education policy condoning two sets of standards, one public and one non-public would have the impact of establishing a dual school system with varied admissions policy, curriculum policies, civil rights policies, teacher certification policies, constitutional requirements and governance procedures.

The special treatment Tuition Tax Credit proponents seek for private and parochial schools is reinforced by several provisions in the Moynihan-Packwood-Roth bill (S.550).

1. While the bill provides for no exclusion of persons "from admission to such schools, or participating in schools on account of race, color, or national or ethnic origin", it does not mention religion, political beliefs, or ability to pay. Private schools are allowed to make those decisions privately, yet would be eligible for public dollars.

2. "The bill does not grant authority to examine books or accounts, or the activities, of any school which is operated, supervised or controlled by or in connection with a church or convention or association of churches." This provision neatly and simply eliminates the possibility of public scrutiny

of programs, audits, and evaluation. It is plain bad business to spend public funds without opportunity for visual accountability.

3. "This tax credit is not to be considered as federal assistance to an institution." The distinction between a parent being a recipient and the institution being a recipient of public dollars is artificial. Since eligibility for credits is based on attendance at private/parochial schools, and since tuition tax credits are indirect benefits, the National Coalition finds this distinction unimpressive. Also, this provision would clearly remove private schools from the purview of federal civil rights standards.

• A DRAMATIC REVERSAL OF FEDERAL POLICY. Tuition tax credits would be a clear signal to parents that the government considers the education of children in private schools to be most important. Tuition tax credits would amount to a declaration from the government to parents that it is abandoning the public schools--and that those who can afford to get out should get out while they are able

#### CONCLUSION

Mr. Chairman, the National Coalition for Public Education contends that the principle of tuition tax credits does a great disservice to public education, has little to do with educational quality, subsidizes the choice of the more affluent tax-payers able to afford private schools at the expense of the majority, and diverts the most important duty of government which is to provide public education.

The demand that a small minority be financially rewarded for not using free, public education, in addition to receiving exemptions from

prevailing educational and social policy has no legitimate place in public thinking. The special treatment private schools receive is reinforced by several provisions in S.550 (Moynihan-Packwood-Roth Tuition Tax Credit Bill) and should not be subsidized by the 90% of those taxpayers who elect to send their children to public schools.

The government's duty to the public is to provide public schools. The duty of the government toward private schools is to leave them alone. This is fundamental.

Thank you for allowing the National Coalition for Public Education to testify.

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The following is a partial list of Coalition members

AMERICAN ALLIANCE FOR HEALTH, PHYSICAL EDUCATION, RECREATION & DANCE (AAHPERD)  
 AMERICAN ASSOCIATION OF COLLEGES FOR TEACHERS EDUCATION (AACTE)  
 AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS (AASA)  
 AMERICAN CIVIL LIBERTIES UNION (ACLU)  
 AMERICANS FOR DEMOCRATIC ACTION (ADA)  
 AMERICAN ETHICAL UNION (AEU)  
 AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES (AFSCME)  
 AMERICAN FEDERATION OF TEACHERS (AFT)  
 AMERICAN HUMANIST ASSOCIATION (AHA)  
 AMERICAN JEWISH CONGRESS (AJC)  
 A. PHILIP RANDOLPH (APR)  
 AMERICANS UNITED FOR THE SEPARATION OF CHURCH AND STATE (AUSCS)  
 AMERICAN VOCATIONAL ASSOCIATION (AVA)  
 BAPTIST JOINT COMMITTEE FOR PUBLIC AFFAIRS (BJCPA)  
 BOARD OF CHURCH & SOCIETY/UNITED METHODIST CHURCH (UMC)  
 CHILDREN'S DEFENSE FUND (CDF)  
 COUNCIL FOR EDUCATIONAL DEVELOPMENT AND RESEARCH (CEDAR)  
 COUNCIL OF CHIEF STATE SCHOOL OFFICERS (CCSSO)  
 COUNCIL OF GREAT CITY SCHOOLS (CGCS)  
 LABOR COUNCIL FOR LATIN AMERICAN ADVANCEMENT (LCLAA)  
 LEAGUE OF WOMEN VOTERS OF THE UNITED STATES (LWV/US)  
 MEXICAN AMERICAN LEGAL DEFENSE EDUCATIONAL FUND (MALDEF)  
 NATIONAL ASSOCIATION OF ELEMENTARY SCHOOL PRINCIPALS (NAESP)  
 NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP)  
 NATIONAL ASSOCIATION OF SCHOOL PSYCHOLOGISTS (NASP)  
 NATIONAL ASSOCIATION OF STATE BOARDS OF EDUCATION (NASBE)  
 NATIONAL COMMITTEE FOR CITIZENS IN EDUCATION (NCCIE)  
 NATIONAL CONGRESS OF PARENTS AND TEACHERS (National PTA)  
 NATIONAL COUNCIL OF JEWISH WOMEN (NCJW)  
 NATIONAL COUNCIL OF SENIOR CITIZENS (NCSC)  
 NATIONAL EDUCATION ASSOCIATION (NEA)  
 NATIONAL PUBLIC EDUCATION AND RELIGIOUS LIBERTY (National Pearl)  
 NATIONAL SCHOOL BOARDS ASSOCIATION (NSBA)  
 NATIONAL SCHOOL PUBLIC RELATIONS ASSOCIATION (NSPRA)  
 NATIONAL SCHOOL VOLUNTEER PROGRAM (NSVP)  
 NATIONAL URBAN LEAGUE (NUL)  
 NEW YORK CITY BOARD OF EDUCATION (NYC Bd. of Ed.)  
 STUDENT NEA (SNEA)  
 UNION OF AMERICAN HEBREW CONGREGATION (UAHC)  
 UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)  
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Testimony on Behalf of the  
National School Boards Association

before the  
Subcommittee on Taxation and Debt Management  
of the Senate Committee on Finance  
2221 Dirksen Senate Office Building

June 4, 1981

Presented by  
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Alexandria City Public Schools, Virginia

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— serving American education through school board leadership —

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SUMMARY OF REMARKS

The National School Boards Association has been unwavering in its opposition to tuition tax credits and S. 550 for many reasons. First, the bill undermines the basic principles of public education. It threatens to erode the nation's public school system and our universal right to an equal educational opportunity. Tax credits would encourage a drain, not only of students from the public schools, but taxpayer support as well. Moreover, tax credits would provide private schools with an unfair competitive advantage over public schools.

It is significant to note that during these difficult economic times, the bill would entail a potential multi-billion dollar revenue loss. Tax credits would also have the effect of damaging state funding for public education.

NSBA supports the growth in the quality in education as well as the right to equal educational opportunity. This tuition tax credits bill would have the effect of lowering, not raising, the quality of education by eroding the public school system on which this nation has progressed. Furthermore, the bill would undermine the public schools as a universal harbor for equal opportunity and offer no such harbor in return.

Introduction

My name is Claudia Waller, and I am a school board member for the Alexandria, Virginia public school system. I am pleased to have this opportunity to testify before the subcommittee.

The National School Boards Association is the only major education organization representing school board members. Throughout the nation, approximately 80,000 of these individuals are Association members. These people, in turn, are responsible for the education of more than ninety-five percent of the nation's public school children.

Currently marking its thirty-ninth year of service, NSBA is a federation of state school boards associations, with direct local school board affiliates, constituted to strengthen local lay control of education and to work for the improvement of education. Most of these school board members are elected public officials. Accordingly, they are politically accountable to their constituents for both education policy and fiscal management. As lay unsalaried individuals, school board members are in a rather unique position of being able to judge legislative programs purely from the standpoint of public education, without consideration to their personal professional interest.

Mr. Chairman, our testimony today speaks in complete opposition to S. 550 and the concept and application of tuition tax credits for elementary and secondary education. In addition to the philosophical objections expressed in our association's policies, NSBA finds that serious arguments and policy questions are raised concerning (1) the impact of tuition tax credits on public schools, and (2) the economic feasibility of the proposal.

## I. Tax Credits Undermine the Basic Principles of Public Education

Mr. Chairman, since our focus is on the future of public education, our reasons for opposing tax credits are based primarily on the argument that tuition tax credits undermine the principles of America's traditional system of universal free public education.

### A. Public Education is Critical to a Democracy

Public Education is critical to a democracy and responsible for America's leadership. After all, public education has been a success and the foundation for our country's progress. More than developing a national wealth of leaders, inventors, and scholars, the public schools have educated the people in the values, knowledge and obligations required of a democracy.

The quality of this educational opportunity has been a springboard to participating in other rights in our Democratic society. Whether the right to vote, the right to own property, or the right to employment opportunities are meaningful for all citizens is contingent on a basic quality education provided by our public school systems. As our nation has met the challenges of industrial development, the space age, social equality and reindustrialization, the public schools performed a crucial role. Our free universal public school system has provided more social mobility and a higher general level of education than exists in any other country in the world. Accordingly, we feel positive efforts should be made to improve the public schools for the future. A proposal such as tuition tax credits for private school parents would threaten all of this progress.

### B. Tax Credits Encourage a Dual School System

The United States is a nation which was founded, and which thrives on, egalitarian principles. The universal right to an equal educational opportunity is fundamental to those egalitarian principles. The federal role over the past fifteen years has attempted to financially assist local school districts in

providing for the special high cost services which educationally disadvantaged, handicapped, or limited English-speaking children need to assure their equal educational opportunity.

In reviewing the Administration's overall education request, the federal government is being asked to turn away from its current support of egalitarianism in two respects. First, the Administration is requesting massive budget cuts to programs which fund the equal opportunity of special populations. Second, through tuition tax credits, it is encouraging the creation of a dual school system: i.e., private schools for upper-income children whose parents can afford to pay the cost of tuition in the first place, and public schools for those children who are unacceptable to the private schools and whose parents cannot afford to pay the initial tuition costs or wait the period of time to receive the tuition credit.

#### C. Tax Credits Encourage Enrollment Shifts

Tax credits could further undermine public education by encouraging enrollment shifts to private schools. A credit in the amount of \$250 per student, as suggested in S. 550, is often a substantial portion of the cost of a private elementary or secondary school. Hence, parents who might otherwise have kept their children in public schools might be more likely to take advantage of the tax credit and place their children in private schools. This could accelerate and exacerbate the serious enrollment decline already underway in our public schools.

Another problem enrollment shifts create is the loss of voter support. Local property taxes -- which on the average account for 48% of total school revenues -- are highly sensitive to voter reactions. One reason is that taxpayers do not vote on federal and state budgets and therefore express general anti-tax sentiments through school budget votes. Education is supported by this definable constituency of users. If tuition tax credits attract a significant number of students into

private education, voter support for school funding could be very seriously jeopardized. And it will become increasingly difficult to pass reasonable school budgets.

D. Tax Credits Provide Private Schools with an Unfair Competitive Advantage Over Public Schools

One final point I am going to make today to substantiate the argument that tuition tax credits undermine the principles of public education is that tax credits provide private schools with an unfair competitive advantage over public schools. Most states have compulsory school attendance laws, and free public education is the way our society seeks to provide all children with their birthright of equal educational opportunity. And, the 16,000 local school boards in this country are charged with making this birthright a reality. Private schools, on the other hand, have far more leeway in determining whom they let in and whom they keep out. Private schools can choose to admit only the brightest students, those without discipline or language problems, and those from affluent families. Additionally, public schools must abide by laws and court decisions that many private schools can often ignore.

In short, because some private schools can refuse to offer services that public schools must provide, and because private schools can be more selective with regard to whom they admit in the first place, a tuition credit could give private schools an unfair competitive advantage over public schools.

With regard to dollar levels, the public schools, which enroll about 40 million students, received about \$8.7 billion in federal assistance in FY 1981 and spent about \$200 per student (this amount will be decreased by 25% for FY 1982). Under a tuition tax credit policy, private schools could indirectly receive an estimated \$2.23 billion for the education of about 4.4 billion students and may result in as much as \$500 per student. We can see no justification for this disparity of

federal emphasis -- especially since, on an ability-to-pay basis, the public school parent is less able to pay property tax increases than the middle- and upper-income level parent is able to pay tuition increases.

## II. Tuition Tax Credits Break the Budget

Mr. Chairman, NSBA has serious concerns about the economic feasibility of a tuition tax credit proposal at this time in our nation's history.

### A. Tax Credits Entail a Potential Multi-billion Dollar Revenue Loss

During this time of fiscal restraint, tax credits would entail a potential multi-billion federal expenditure that would exceed the costs of our largest existing federal education program. It is hypocritical and unjust for an Administration to support severe budget cuts across the board and a tuition tax credit proposal that will result in a multi-billion dollar federal revenue loss simultaneously. At \$250 a tax credit, \$1.12 billion would be lost at the elementary and secondary level alone.

### B. Tax Credits Damage State Funding for Public Education

In addition to the damage tax credits can do at the federal level, tax credits can also potentially damage state funding for public education. Over 40% of school funding is derived from the state level. For the most part, these funds are distributed on the basis of student enrollments in the form of average daily attendance. Therefore, any school district which loses large numbers of students can suffer major revenue losses beyond the savings derived from having to educate fewer children. For example, if a school system loses two students per classroom, the lost revenues would far exceed the costs -- especially since the basic overhead cost of the classroom unit would be unchanged.

To the extent that local school districts fund these losses, per-pupil costs and local taxes will rise -- while total school system services will fall. This



disruption will most likely mean that state systems of school finance will have to be redesigned.

### III. Conclusion

In opposing this new policy direction, the point is not whether private schools should exist -- or even flourish. The point is whether the federal government should transform its current policy to ensure equal opportunity for special populations into a private school general aid program which, by design, promotes a dual system for educational opportunity. The federal government should not, as a matter of policy, position itself to deprive special populations of their opportunity to participate and at the same time promote a situation which will result in fulfilling the general failure of the public schools for all its students.

In sum, for most Americans, the opportunity to participate in -- and to contribute to -- our society starts with an education. Federal tuition tax credits as an approach, and especially in tandem with proposed budget cuts, undermine the public schools as a universal harbor for equal opportunity -- and offer no such harbor in return.

**NOTE:** Applicable NSBA Resolutions and NSBA Beliefs and Policies are:

Resolution 2.1.18 Tuition Tax Credits/Vouchers  
Article I, Section 1.3 Separation of Church and State  
Article IV, Section 2.1 Public Support of Education

Senator **PACKWOOD**. Next, we will hear Kirby Ducote, Mary Patnaude, and Timothy O'Brien.

Again, let me emphasize that your entire statements will be placed in the record, and to the extent that you can abbreviate them I would appreciate it.

And shall we start with Kirby Ducote, and do I pronounce it right?

**STATEMENT OF KIRBY J. DUCOTE, EXECUTIVE DIRECTOR, LOUISIANA FEDERATION, CITIZENS FOR EDUCATIONAL FREEDOM, NEW ORLEANS, LA.**

Mr. **DUCOTE**. Mr. Packwood, I am Kirby Ducote, executive director of the Louisiana Federation, Citizens for Educational Freedom [CEF] New Orleans, La., and I am accompanied by Mr. Howard Jenkins, superintendent of schools, Archdiocese of New Orleans.

The archdiocesan school system is one of the oldest school systems in the United States, founded in 1725. So it is celebrating its 256th anniversary this year.

We asked to be heard today because of the remarkable similarity between the 13-year effort of CEF in Louisiana and the proposal for public/private educational advancement made by Senator Moynihan as he presented the Packwood-Moynihan bill to Congress on February 24, 1981.

Senator Moynihan urged support not only for tuition tax credits but for two additional bills—one seeking unrestricted grants to public education at the local level and the other requiring the Federal Government to pay for any programs it mandates of local schools, public or private.

The bottom line is that the presentors of the Packwood-Moynihan bill seek not only to provide assistance to parents of nongovernment schoolchildren but ask that the quality of all education be strengthened by actions of this Congress.

Turning to Louisiana, we readily admit that the primary thrust of CEF has been for aid for children in nongovernment schools.

But from our 1968 founding until today we also have supported such things as bond issues and sales tax increases for government schools.

We successfully sponsored educational tax credits for children in all schools, not merely those in nonpublic schools.

We developed a schoolbus transportation law which assists parents with the cost of transportation, whether their children are in public or nonpublic school. We sponsored successfully the largest ever single increase in textbook allowances for government and nongovernment schoolchildren alike.

Details of those and other efforts are contained in the extension of these remarks but the point I wish to make is that we are not single-minded—except in our desire to improve the quality of education while preserving parents' rights.

I might add here, that your bill, S. 550, could be changed, to parallel what we did in Louisiana. You could extend the tax credit to education expenses incurred by parents of public school children; expenses such as textbooks, workbooks and supplies, athletic fees, lab fees, and various other fees which I can go into if you so desire.

Senator PACKWOOD. I want to ask you a question, because I am curious how it works.

It is a credit, and the students of public school can take the credit against what—lab fees, gym fees, locker fees, and whatnot?

Can they take it against any of the property tax they may pay for the support of public schools?

Mr. DUCOTE. No, Senator.

Louisiana Department of Revenue and Taxation did a study for the legislature to estimate what it would cost to send a child to public school.

We asked them to do this inasmuch in a court decision, somewhere down the line, it was indicated that public school parents also have costs, or expenses to send their children to school.

Therefore, a particular piece of legislation which was declared unconstitutional because it did not include the public schoolchildren. And in the study, the Louisiana Department of Revenue came up with these figures: required books—which means textbooks, library books, workbooks and educational materials—they estimated that cost to a parent at \$30 a year.

School supplies—such as pencils, pens, notebooks, binders, paper—that was \$60 a year.

Required clothing—such as gym and band, and choir uniforms—\$35 a year.

Lab fees and athletic fees were \$10 a year, and they included school lunches, because they felt that it was part of the educational process. That was \$50 a year, for a total of \$180 a year—in expenses to a public school parent per child.

Senator PACKWOOD. And is that the credit they can take?

Mr. DUCOTE. They can take a \$25 credit. You see, the law is probably the most simple law ever written.

If you don't mind I will read it to you—it is just one paragraph.

It says:

In addition to any other credits against the tax payable on net income, which the law allows to an individual taxpayer, the taxpayer shall be entitled to the tax credit against the tax payable on net income provided as follows: a taxpayer required to file a Louisiana tax return may claim a tax credit for educational expenses incurred after January 1, 1979, for each child attending kindergarten, elementary or secondary school—kindergarten through twelfth grade, if the child qualifies as a dependency exemption on the taxpayer's Louisiana income tax return. Any taxpayer who so qualifies shall be entitled to a maximum tax credit of \$25 per child for educational expenses.

Senator PACKWOOD. What is the tax credit for private education?

Mr. DUCOTE. \$25; it is across the board—the whole group of schoolchildren. And in Louisiana, I must take issue with a statement that was made earlier.

There are 150,000 children in private and parochial schools. Of the 150,000, about 110,000 attend Catholic schools.

There are approximately 810,000 or 840,000 in the public school system, so it is not a dual system, as was indicated in earlier testimony.

Senator PACKWOOD. Last question.

Has the law of the across-the-board \$25 tax credit been tested or challenged in the court?

Mr. DUCOTE. No; it hasn't, inasmuch as it has been on the books now for 2 years.

I believe in 1978, there was a decision by a Federal, appellate court in Minnesota. It is referred to as the *Romer* case. Minnesota has a similar piece of legislation. The ACLU brought suit against it. After the appellate court decision came down, the ACLU abandoned the situation, inasmuch as they said,

We feel now, that as a result of the testimony given, that the aid to the educational tax credit is going to the parents for the benefit of the child, and not going directly to the school.

Senator PACKWOOD. The reason I ask that is when Pat and I first drew this bill 4 years ago, we initially had in it, in our first draft, a provision for public and private schools.

We bounced it off of the Public Education Lobby, and they were totally uninterested in it. They had no intention of supporting the bill, with or without. They didn't want it, so we took it out.

And I am curious, in Louisiana, if this credit has the support of the Louisiana Education Association and other public school lobbying bodies.

Mr. DUCOTE. Not one lobbying group, be it the Louisiana Association of Educators or AFL-CIO, AFT [the American Federation of Teachers] testified against the legislation.

And it sailed through. We had, of the 144 members of the Louisiana Legislature, we had somewhere around 120 coauthors on the bill.

To continue, I should point out that CEF, which I represent, and the Louisiana Catholic Conference, which Mr. Jenkins represents, were successful in 1973-74 in changing the Louisiana constitution, which had contained a Blaine-type amendment prohibiting aid, directly or indirectly, to any church-related institution which performed a public service such as education.

We struck not only the Blaine language but inserted this:

The Louisiana legislature shall provide for the education of the people of the state and shall establish and maintain a public educational system.

We urge that Congress take the same approach—providing for the education of all the children of the Nation and for a public school system.

Parents—having different values, visions, and educational desires for their children—are demanding rights and choice in education, as indicated by an earlier Gallup poll regarding educational vouchers.

In closing this brief statement may I point out that former President Nixon, in a statement to the National Catholic Education Association, had raised the hopes of parents with children in non-Government schools by promising to help them.

Former President Carter—just before his election—held out similar hope to parents when he promised assistance in a message to the chief administrators of Catholic schools.

This administration likewise is on record—and firmly on record—in support of parental rights in education, through tuition tax credits.

We remind the administration of this support and urge strong, up-front action on their part immediately to guide the Packwood-Moynihan bill to success.

Parents, forgotten by Nixon and openly turned upon by Carter, are saying over and over again that they want the choice in education which is offered by the Packwood-Moynihan approach.

The hopes of these parents should not be dashed again.

Thank you very much.

Senator PACKWOOD. Thank you, and I apologize for interrupting you.

You easily could have finished your statement in time if I hadn't pursued that credit and the constitutionality in the issues.

Next, we will take Mary Patnaude.

Do I pronounce that right?

**STATEMENT OF MARY M. PATNAUDE, CHAIRPERSON AND EXECUTIVE DIRECTOR, NEW JERSEY RIGHT TO EDUCATIONAL CHOICE COMMITTEE, INC., WESTFIELD, N.J.**

Ms. PATNAUDE. I thank you for allowing me to testify here today, Senator.

The question that must be addressed by legislators before they come to a decision regarding their position on Federal tuition tax credits for families of elementary and secondary school students is basic.

Does the present system of funding education at these levels treat all of our students in a just and equitable manner?

If the answer to this question is affirmative, there is no need for a change in policy regarding the funding of education. If the answer is negative, then a remedy must be found to correct the flaw.

I believe that the present method of funding education at these levels discriminates against families who choose, or would like to choose nonpublic education for their children and that Federal tuition tax credit legislation, with a refundable clause for low-income families, represents a meaningful method of remedying that discrimination.

Why is the present method of funding discriminatory? Government mandates the education of all of our young people and there seems to be little disagreement that this mandate is in the best interest of our society.

Government at all levels levies taxes on all taxpayers to pay for this universal education. Government also guarantees parents the right to choose the kind of education they want for their children.

In the Supreme Court decision, *Pierce v. the Society of Sisters*, the Court says:

The fundamental theory of liberty on which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not a mere creature of the State; those who nurture him and direct his destiny have the right coupled with the high duty to recognize and prepare him for additional obligations.

However, in spite of this guarantee of parental choice, government imposes a financial penalty on parents who choose anything but public schools for their children, thereby denying any real choice to most poor and many middle income families.

In view of the fact that most of the nonpublic schools in our country are religiously affiliated schools, the so-called neutrality of Government with regard to religion should be considered.

Can it really be considered a neutral position for government, at all levels, to fully fund education in the public system, with its philosophy of secular humanism, while refusing any meaningful subsidy to those families who prefer the philosophies of religiously affiliated or other nonpublic schools?

Does government really believe that parents have the ability to exercise a choice in view of this one-sided funding policy?

Can anyone in a policymaking position seriously define such funding practices as religiously neutral?

If attendance at a particular nonpublic school fulfills the mandate regarding compulsory education, should government continue to impose financial penalties because of the philosophy of the school?

I believe not.

The education received by students in nonpublic schools is accepted as fulfilling the mandate for compulsory education. The diplomas of these students are accepted as valid at both public and nonpublic high schools and colleges.

Their earning power, as a result of their education, is taxed by government so that all of society benefits from their education.

Non-public-school graduates participate in all segments of our society, in industry, in education, in politics, in the military.

They are deemed worthy by our society in all things but one.

They are not deemed worthy of a meaningful share of education tax money for their education. Can this be considered a just and equitable policy?

I'd like to wind up, Senator, by saying that I have four children who have gone through Catholic schools.

I began to work for equal recognition of their rights, and our family rights when our youngest child was not yet in kindergarten.

She will graduate from high school next year. We have waited a long time.

I hope you will act quickly.

Thank you.

Senator PACKWOOD. Thank you very much.

Dr. O'Brien.

#### STATEMENT OF DR. TIMOTHY O'BRIEN, CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS

Dr. O'BRIEN. Thank you, Mr. Chairman, Senator Bradley.

What I want to present this afternoon—you have my written testimony, so I am going to just try to touch some of the high points.

I directed for the Catholic League for Religious and Civil Rights, a study of inner city, private schools in eight metropolitan areas.

Dr. Jim Cibulka of the University of Wisconsin, Milwaukee, who is a professor of education there, and Dr. Don Zewe, of Syracuse, N.Y., LeMoyne College, worked with me in the analysis of the data.

And, in my written testimony, I have pretty well laid out, I think, the key findings of our investigation that explain why inner city private schools are so popular.

When we looked at who attends these schools—the client group and the kind of income level that they have, and who operates the schools—we found generally, that of the inner city private schools

that are operating in areas that are defined by the Federal Government as eligible for title I funds, 90 percent of these schools are operated as Catholic schools; 56 percent of the population of those schools are black children, and about one-third of the children are of Hispanic background.

We found that of the parents who send their children to these schools, that their income is extremely low.

Bishop Lyké, this morning included that in his testimony, representing the U.S. Catholic Conference of Bishops.

We found that one-third of the parents who send children to these schools are single-parent families.

We found that most of the families that send children to the school have more children per family than the average American family.

So in a sense, we painted a picture from the evidence that we have of inner city private schools and how they serves minorities and low-income populations. And serve, at the same time, a very desperate public need.

When we interviewed teachers and interpreted the 4,000 parental responds to our questionnaires, as to why they chose inner city private schools we were surprised that we did not find a hostility toward the public school system.

In the responses to the questions of those 4,000 parents; we found that there were a cluster of responses that could be put into a money market model. The reasons parents chose these schools were: First, a perceived high quality education, Second, the religious and moral values taught, and third, discipline in the school—a place where their children could be reasonably safe and educated at the same time—but then came the very interesting nonmonetary kind of question, of where benefit analysis concluded that the parents were drawn to the school in sort of partnership kind of role—a sincere loyalty to the school.

Maybe because the tuition was so difficult to come by, participation in school sponsored events like bingo, festivals, and car washes created a close affinity between the parent and the school.

We also found those schools had rather flexible policies and received a good deal of input from parents in the community.

In testimony that I have been listening to this afternoon, and that you have been listening to for the last 2 days, our study concurs with similar research in that these schools do not operate as elitist schools.

They are characterized by open admissions policies. Nearly every one of the schools has a waiting list for children to get in.

The average tuition is around \$400 to \$450 a year. And rather than being too detailed I encourage you to reflect on the testimonies Dr. Coleman, Dr. Thomas Vitullo-Martin, and the findings of our study so that public policy is based on reliable data, rather than ideology and self-interest.

So, thanks very much.

Senator PACKWOOD. Doctor, one of the frustrations, I noticed both 4 years ago on this bill and now, is that there is a hard core of opposition—not everybody—but a hard core of opposition to whom facts make no difference.

Because they start with a philosophy of not wanting the private school systems. And if you start with that philosophy, it doesn't matter what your percentage of Hispanics or blacks are, or that your tuition is only \$350, or that you are the last refuge in an inner city area. None of that matters.

So while we have the facts, and when we go to the floor, and I think we have the votes in this committee—hen we go to the floor, we'll argue those facts.

Senator BRADLEY. Mr. Chairman.

Senator PACKWOOD. Yes; go ahead, Bill.

Senator BRADLEY. If you would yield, I would like to simply call the committee's attention to a section of Mrs. Patnaude's testimony, which I think is directly relevant to some of the questions that were posed or some of the points that were made earlier this morning by one panel that I happened to hear, relating to the racial makeup of the private school system.

And I would like to call attention to the testimony that refers to the Catholic elementary and secondary schools in New Jersey, where in the city of Newark 69 percent of that school population is black or Hispanic.

In Camden, 72 percent is black or Hispanic, and statewide 20 percent is black or Hispanic.

It seems to go a long way toward establishing what populations these schools are serving.

I think that the other statistics that are embodied in the testimony offered by Mrs. Patnaude are quite important for the committee to consider, and I would urge that we do that.

I would thank her, also, for her testimony, and Mr. Koserowski as well.

Senator PACKWOOD. I have no other questions of this panel. Bill, do you?

Senator BRADLEY. No; I don't, Mr. Chairman.

Senator PACKWOOD. Thank you, again. You have been very patient.

I appreciate you waiting this long.

[Statements follow:]





*Louisiana Federation*  
**CITIZENS FOR EDUCATIONAL FREEDOM**  
*P.O. Box 53244 • New Orleans, La. 70153 • (504) 522-7400*

TESTIMONY BEFORE THE UNITED STATES SENATE FINANCE COMMITTEE  
 Subcommittee on Taxation and Debt Management  
 June 4, 1981 - Washington, D.C.

Sen. Packwood, chairman, and members of the subcommittee.

I am Kirby J. Ducote, Executive Director, Louisiana Federation, Citizens for Educational Freedom (CEF), New Orleans, La., and I am accompanied by Mr. Howard Jenkins, Superintendent of Schools, Archdiocese of New Orleans, representing the Catholic school superintendents of the six dioceses of Louisiana, with schools enrolling 120,000 students.

\* \* \*

We asked to be heard today because of the remarkable similarity between the 13-year effort of CEF in Louisiana and the proposal for public-private educational advancement made by Sen. Moynihan as he presented the Packwood-Moynihan bill to Congress on Feb. 24, 1981.

Sen. Moynihan urged support not only for tuition tax credits but for two additional bills -- one seeking unrestricted grants to public education at the local level and the other requiring the federal government to pay for any programs it mandates of local schools, public or private.

The bottom line is that the presentors of the Packwood-Moynihan bill seek not only to provide assistance to parents of non-government school children but ask that the quality of all education be strengthened by actions of this Congress.

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on Taxation and Debt Management

Turning to Louisiana, we readily admit that the primary thrust of CEF has been for aid for children in non-government schools. But from our 1968 founding until today we also have supported such things as bond issues and sales tax increases for government schools. We successfully sponsored educational tax credits for children in ALL SCHOOLS, not merely those in non-public schools. We developed a school bus transportation law which assists parents with the cost of transportation, whether their children are in public or nonpublic school. We sponsored successfully the largest ever single increase in textbook allowances for government and non-government school children alike.

Details of those and other efforts are contained in the extension of these remarks but the point I wish to make is that we are not single-minded -- except in our desire to improve the quality of education while preserving parents rights.

I should point out that CEF, which I represent, and the Louisiana Catholic Conference, which Mr. Jenkins represents, were successful in 1973-74 in changing the Louisiana Constitution, which had contained a Blaine-type amendment prohibiting aid, directly or indirectly, to any Church-related institution which performed a public service such as education. We not only struck the Blaine language but inserted this:

"The (Louisiana) legislature shall provide for the education of the people of the state AND (emphasis added) shall establish and maintain a public educational system."

We urge that Congress take the same approach -- providing for the education of all the children of the nation AND for a public school system. Parents -- having different values, visions and

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on Taxation and Debt Management

educational desires for their children -- are demanding rights and choice in education, as indicated by an earlier Gallup poll regarding educational vouchers.

In closing this brief summary may I point out that former President Nixon, in a statement to the National Catholic Education Association, had raised the hopes of parents with children in non-government schools by promising to help them. Former President Carter -- just before his election -- held out similar hope to parents when he promised assistance in a message to the Chief Administrators of Catholic Schools.

This administration likewise is on record -- and firmly on record -- in support of parental rights in education, through tuition tax credits. We remind the administration of this support and urge strong, up-front actions on their part IMMEDIATELY to guide the Packwood-Moynihan bill to success.

Parents, forgotten by Nixon and openly turned upon by Carter, are saying over and over again that they want the choice in education which is offered by the Packwood-Moynihan approach. The hopes of these parents should not be dashed again.

I have dwelt in my opening remarks on our Louisiana program because, as I mentioned, it bears a remarkable resemblance to the plea of Sen. Moynihan in presenting the Elementary and Secondary Education Reform Program on Feb. 24, 1981. The details of that program have not received the attention they demand.

The Senator introduced not one but three bills in the package for the reform of education (not government education or non-government education) but EDUCATION.

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on Taxation and Debt Management

He says that each of the bills embodies a major principle not now clearly stated in federal law and that, in combination, they represent a significant reform in the relationship between the federal government on the one hand and the nation's schools and students on the other.

"They comprise," he said, "a comprehensive agenda for the Congress in its efforts to ensure the vitality, quality and diversity of our primary and secondary education system."

These are the three components of his proposal:

1. That the government, reflecting its first responsibility to government schools, provide unrestricted aid to the nation's public school system on a matching basis so that by the end of this decade one dollar will come from Washington to match every four from state and local sources. This would be in addition to funds for categorical aid but the new "unrestricted" money would be allocated for use by local, self-determination.

2. The second proposal is much like the bill that CEF passed in Louisiana in 1980 which provided that the state would pay for those services required of non-government schools by law or regulation. Sen. Moynihan says that the federal government should not require a multitude of services to be performed by local government or non-government schools unless it pays for the cost of performing these services.

3. The third, of course, is the tuition tax credit bill and, in this instance, I quote Sen. Moynihan:

"My third proposal, introduced jointly with my distinguished colleague, Sen. Bob Packwood, would allow parents of children enrolled in non-government schools at the elementary and secondary level to claim in income tax credit to offset a portion of their tuition costs.

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on Taxation and Debt Management

The credit would also be available to those incurring tuition costs for attendance at colleges and universities."

None of the three proposals would replace or supplant existing programs aimed at particular purposes or at students with special needs.

There's controversy in the Packwood-Moynihan plan, of course, but it represents thinking men's suggestions as to how to stimulate education in this country; how to assist local government schools without creating a federal education monopoly; how to assist that taxpayer who chooses to have some of his tax dollars spent in a non-government school rather than a government school; and how to assure diversity, competitive spirit, and freedom in education.

I urge that we should all be thinking along the lines of cooperation between government and non-government education, for without that cooperation all of our efforts move forward at half steam rather than full speed ahead.

Before that cooperation can begin, those who oppose any aid to children in non-government schools must realize this: Blind opposition to any aid only angers a large segment of taxpayers. Those are the taxpayers who pay tuitions for children at non-government schools as well as taxes to support a government school system which local and national publications, in growing numbers, condemn as sick at best, as terminally ill, at worst.

At the same time that the government schools come under scrutiny as never before in my lifetime, there is a growing library of studies and statistics showing that non-government schools are doing a good job, with far less money, and are serving the inner cities as well as the suburbs. Studies show minority parents who live in the slums

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on Taxation and Debt Management

or housing projects are scraping together two or three or four hundred dollars a year to educate their child in an inner-city Catholic, Lutheran or other independent school.

Their plea -- articulated by withdrawal of their children from government schools and evident self-sacrifice in paying tuitions -- is for improved quality of education and the right to direct the education of their own children.

We declare that those of us who are fighting for tuition tax credits are not competing with the government and its schools -- and our Louisiana record bears that out.

Rather we are working to assure parental rights in the field of education and seek -- by the types of approaches we have taken in Louisiana -- to assure quality education in both government and non-government schools, either of which may be selected by parents for their children IF, IN FACT, TUITION PAYING PARENTS ARE NOT PENALIZED FINANCIALLY FOR EXERCISING THEIR RIGHT TO CHOOSE A RELIGIOUS OR OTHER NON-GOVERNMENT SCHOOL FOR THEIR CHILDREN.

We commend Sens. Packwood and Moynihan and other supporters and urge immediate and favorable consideration of their visionary tuition tax credit plan.

Testimony before the Finance  
Subcommittee on Taxation and Debt  
Management on behalf of the  
NEW JERSEY RIGHT TO EDUCATIONAL  
CHOICE COMMITTEE, INC.

June 4, 1981

Prepared by:

Mary M. Patnaude, Chairman

Frank T. Koserowski, Counsel

SUMMARY

The present system of funding education at the elementary and secondary levels is discriminatory because it imposes a financial penalty on families who choose non-public education for their children. Because of this financial penalty many poor and middle income families are denied the choice in education guaranteed by government.

In *Pierce vs. The Society of Sisters* the Supreme Court said, "The fundamental theory of liberty on which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not a mere creature of the state; those who nurture him and direct his destiny have the right coupled with the high duty to recognize and prepare him for additional obligations."

The Catholic school population in New Jersey is in no sense "elitist" or "well to do". Over 20% of its Catholic school population is comprised of minorities.

The passage of S.550 or comparable tuition tax credit legislation will provide significant relief for poor and middle income parents and will enable them to exercise their constitutional right to choose non-public education for their children.



The question that must be addressed by legislators before they come to a decision regarding their position on federal tuition tax credits for families of elementary and secondary school students is basic. Does the present system of funding education at these levels treat all of our students in a just and equitable manner? If the answer to this question is affirmative, there is no need for a change in policy regarding the funding of education. If the answer is negative, then a remedy must be found to correct the flaw.

I believe that the present method of funding education at these levels discriminates against families who choose, or would like to choose non-public education for their children and that federal tuition tax credit legislation, with a refundable clause for low income families, represents a meaningful method of remedying that discrimination.

Why is the present method of funding discriminatory? Government mandates the education of all of our young people and there seems to be little disagreement that this mandate is in the best interests of our society. Government at all levels levies taxes on all taxpayers to pay for this universal education. Government also guarantees parents the right to choose the kind of education they want for their children. In the Supreme Court decision, *Pierce vs. the Society of Sisters*, the Court says, "The fundamental theory of liberty on which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not a mere creature of the state; those who nurture him and direct his destiny have the right coupled

with the high duty to recognize and prepare him for additional obligations." However, in spite of this guarantee of parental choice, government imposes a financial penalty on parents who choose anything but public schools for their children, thereby denying any real choice to most poor and many middle income families.

In view of the fact that most of the non-public schools in our country are religiously affiliated schools, the so-called neutrality of government with regard to religion should be considered. Can it really be considered a neutral position for government, at all levels, to fully fund education in the public system, with its philosophy of secular humanism, while refusing any meaningful subsidy to those families who prefer the philosophies of religiously affiliated or other non-public schools? Does government really believe that parents have the ability to exercise a choice in view of this one-sided funding policy? Can anyone in a policy making position seriously define such funding practices as religiously neutral? If attendance at a particular non-public school fulfills the mandate regarding compulsory education, should government continue to impose financial penalties because of the philosophy of the school? I believe not.

The education received by students in non-public schools is accepted as fulfilling the mandate for compulsory education. The diplomas of these students are accepted as valid at both public and non-public high schools and colleges. Their earning power, as a result of their education, is taxed by government so that all of society benefits from their education. Non-public school graduates participate in

all segments of our society, in industry, in education, in politics, in the military. They are deemed worthy by our society in all things but one. They are not deemed worthy of a meaningful share of education tax money for their education. Can this be considered a just and equitable policy?

Consideration should also be given to poor families who have not suffered a financial penalty for using non-public schools because, as a result of their poverty, they have never been able to choose them in the first place. They are denied any option other than public education whether or not the philosophy of the public school is compatible with their own. On an even more basic level they are denied any alternative even if they believe that their children are not learning in the public school. Should such deprivation be allowed to continue?

It is not my purpose to criticize public education or to argue against the interests of public school students. The non-public school community has never had a policy of doing so. But I strongly urge the Subcommittee to address the question of what the primary purpose of government's policy regarding education should be. Should it be the advancement of maximum education opportunity for each of our young people in the school chosen by his parents as best qualified to accomplish this purpose; or should it be the protection and preservation of the public system only, by the continuing imposition of financial penalties on those families who seek an alternative to public education? A few years ago the Internal Revenue Service attempted to impose regulations on the non-public school sector to insure that minority families would have access to non-public schools. What the proposed

regulations ignored was the fact that it is the inequity of the current policies regarding the funding of education that prevent many low income minority and white families from using non-public schools for their children. S.550, with its refundable clause for low income families, offers a remedy for this deprivation of the poor, as well as a relief for middle income families.

Quite often, opponents of tuition tax credit legislation attempt to describe it as a form of tax relief to the "elite" or "well to do" segments of the education population. The make-up of the Catholic school population in New Jersey, and particularly in the Archdiocese of Newark, belies their argument. It should be noted that the Archdiocese comprises the most urban area of New Jersey, which is the most densely populated State in the Union. I have taken the liberty of enclosing the statistical make-up of the student population in the four dioceses of New Jersey. (See Exhibit "A"). The Subcommittee can see that in the heavily urban areas of Newark, Camden, Passaic and Trenton the bulk of the Catholic school population is comprised of minority students. For example, Catholic elementary and secondary schools in the City of Newark have a total enrollment of 7,137 students of which 4,911 are blacks and Hispanics. In other words approximately 69% of the total student population is comprised of minority children. In the City of Camden, the percentage is even higher. Out of a total enrollment of 1,732 students, 1,263, or approximately 72%, are minorities. Statewide, elementary and secondary Catholic schools enroll 191,825 students. 38,535 of these students are non-Caucasian and reflect a statewide percentage

of 20%.

The now famous Coleman Report speaks to the achievement levels reached by students of diverse ethnic backgrounds in the non-public sector. It states:

2. Catholic schools more nearly approximate the "Common School" ideal of American education than do public schools, in that the achievement levels of students from different parental educational backgrounds, of black and white students and of Hispanic and non-Hispanic white students are more nearly alike in Catholic schools than in public schools.

(Summary of Major Findings for Public and Private Schools by James Coleman, Thomas Hoffer and Sally Kilgore, March, 1981, at page 10).

Therefore it is logical to assume that tuition tax credit relief would probably have the effect of stimulating minority enrollment in non-public schools. Simply stated, a significant portion of the tax relief envisioned by S.550 will benefit minority and urban core parents who most need it!

Inflation has resulted in skyrocketing costs in the operation of both non-public and public schools. In non-public schools the tuition levels continue to increase, while at the same time the taxes to fund public education continue to escalate to cover increased costs. Many families in the lower and middle income brackets lose the ability to choose non-public education because of this double cost increase. The proposed tuition tax credit legislation would help to alleviate this vicious circle by enabling more poor and middle income parents to choose

the non-public option should they so desire.

While critics of tuition tax credits suggest that passage of S.550 or comparable legislation will endanger the existence of the public school system, the threat is barely credible. However, if the non-public alternative is allowed to be slowly strangled because of a lack of equitable funding for its students from education tax revenues, the economic consequences to an already unstable public school system will be devastating. Assuming that it costs approximately \$2,500.00 a year to educate a student in the public sector, closing the doors of the Catholic schools in New Jersey would mean an increase in cost of over 475 million dollars in New Jersey alone. Multiply this per capita rate by 5.5 million children nationwide and you have the makings of a national crisis, the scope of which pales the alleged threat to the public sector if tuition tax credits become a reality.

Passage of tuition tax credit legislation does not represent an attack on public education. It simply puts the decision regarding what is best for our young people in the hands of those most intimately concerned with their future - - their parents.

We are warned by opponents of the proposed legislation that its passage will bring many problems to the non-public school community. But let me say that similar warnings have always gone out to the victims of discrimination when they seek redress of their grievances. However, our people have always been willing to risk any difficulties that might come with broader opportunities, and I am sure that those parents who use or would like to use non-public schools for their children are equal to the task of finding solutions to any problems that might result from the easing of the financial discrimination which they now endure.

Because of all of these reasons I, as a parent of four children who have been educated in non-public elementary and secondary schools, strongly urge your support for S.550.

EXHIBIT ADiocese of New Jersey  
Statistical InformationInner City Minority EnrollmentDiocese of Camden

## City of Camden

Total Enrollment	1,732	
Black	776	- 44.8%
Hispanic	477	- 27.5%
Oriental	10	.06%

Diocese of Trenton

## City of Trenton

Total Enrollment	2,774	
Black		28.4%
Hispanic		6.2%

There are no high schools in Trenton but all the combined high schools have:

Total Enrollment	2,378	
Black		9.2%
Hispanic		.02%

Archdiocese of Newark

## City of Newark

Total Enrollment	7,137	
Black	2,794	.39%
Hispanic	2,117	.30%

Diocese of Paterson

## City of Passaic

Total Enrollment	1,472	
Black		16.5%
Hispanic		52.7%

## Paterson

Total Enrollment	3,138	
Black		14.1%
Hispanic		47%

## Secondary Schools - Passaic

Enrollment	371	
Black	11.3%	
Hispanic	38.5%	

## Paterson Catholic

Enrollment	702	
Black	34.5%	
Hispanic	26.2%	

## Don Bosco

Enrollment	415	
Black	3.4%	
Hispanic	7.9%	

Two high schools in Paterson, one is regional and the other private.

DIOCESE OF  
NEW JERSEY STATISTICAL INFORMATION

Elementary	Camden		Paterson		Newark		Trenton		
Number of Schools	67		68		210		117		462
Total Enrollment	22,026		16,912		59,290		41,644		118,220
Ethnic Enrollment	Number	%	Number	%	Number	%	Number	%	
American Indian	--		--		93	.002	34	.001	
Black	1,647	.078	927	.055	7,546	.126	1,973	.049	
Caucasian	18,477	.892	13,410	.791	38,829	.647	36,592	.901	
Haitian	--		--		15	.000	--		
Oriental	191	.009	--		1,488	.025	497	.012	
Portuguese	--		--		1,184	.020	--		
Spanish Surnamed	741	.035	2,625	.155	9,110	.152	1,548	.038	
Vietnamese	--		--		25	.000	--		
Other					1,700	.028			

Secondary	Camden		Paterson		Newark		Trenton		
Number of Schools	11		16		47		22		157
Total Enrollment	7,770		6,701		23,088		15,644		55,093
Ethnic Enrollment	Number	%	Number	%	Number	%	Number	%	
American Indian	--		--		28	.001	11	.001	
Black	324	.042	359	.054	2,135	.092	495	.032	
Caucasian	7,224	.939	5,854	.872	18,031	.781	14,843	.949	
Haitian	--		--		4	.000	--		
Oriental	42	.005	--		302	.013	82	.005	
Portuguese	--		--		256	.011	--		
Spanish Surnamed	110	.014	400	.073	2,142	.092	213	.014	
Vietnamese	--		--		19	.001	--		
Other					179	.008			



Oral Presentation Given to the  
United States Senate Finance Subcommittee On  
Taxation and Debt Management  
During Hearings on Tuition Tax Credits  
June 4, 1981

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School Study  
Catholic League for Religious  
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My name is Reverend Timothy J. O'Brien, Ph.D.. I am director of the Study of Inner City Private Schools sponsored by the Catholic League for Religious and Civil Rights, and I am an adjunct assistant professor of political science at Marquette University in Milwaukee.

The highlights of the private inner city school study that I report to you today are the results of data analyses made by Dr. James Cibulka, associate professor of education at the University of Wisconsin - Milwaukee; Dr. Donald Zewe, S.J., assistant professor of sociology at LeMoyne College, Syracuse, New York; and me.

At this hearing, it is my intention to highlight several findings of our research that impact upon the proposed Senate Bill (S.550). To do that, I will develop five points:

- 1) an overview of the descriptive features of our study of inner city private schools;
- 2) the nature of the client groups served by the schools;
- 3) the features that make these schools so attractive and the reasons that low income black and Hispanic parents make such enormous sacrifices to have their children attend them;
- 4) with regard to Catholic schools, presentation of the study's findings that disprove two long-held myths -- that Catholic schools are elitist, and that they exist only as instruments to produce converts; and finally,
- 5) the sad realization that these schools are an endangered species -- despite high demand for the education they provide, the number of these schools is decreasing.

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1) Descriptive Features of the Study:

During the school year 1978-79, this study included 64 randomly selected inner city private schools in an eight city sample in Los Angeles, New Orleans, Chicago, Milwaukee, Detroit, New York, Newark and Washington, D.C. The 55 elementary schools that responded, all of which qualify to receive federal aid for low-income students, serve a total enrollment of 15,312, of whom at least 70 percent are members of racial minorities.

The elementary schools, which have an average enrollment of 278 children, are heavily dependent on lay teachers, with only 30 percent of their teachers being nuns and brothers. The schools operate under open admission policies. The expulsion of children is rare.

The study examines the attitudes of about 4,000 elementary school parents, 339 teachers and 55 principals who responded to our survey.

2) Client Groups the Schools Serve:

These schools serve predominantly low income, minority families. Although 90 percent of inner city private schools are Catholic schools, they have an enrollment that is more than one-third non-Catholic. Over half (56 percent) of the children in these schools are black; about one third (32 percent) are Hispanic. The black students are predominantly Protestant, and the Hispanic children are almost all Catholic.

When family income is considered, the sacrifices of parents who choose these schools become readily apparent. It is important to note that the average yearly tuition in these schools during 1978-79 was

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between \$450 - \$500; yet 15 percent of the families earned less than \$5,000 annually, 35 percent had annual incomes of less than \$10,000, and, taken as a total client group, 72 percent of the families had annual incomes of less than \$15,000. When compared with all U.S. families, those parents who choose inner city private schools are strikingly poor. For the same time period (1977-78) 52 percent of U.S. families had incomes of less than \$15,000 compared with 72 percent of the parents we sampled.

The sacrifice of these parents is noted also when it is considered that one third of the families are single-parent and typically headed by a mother. Of that group, 61 percent of the mothers work full time. Of the two-parent families, about half have one full-time wage earner, 30 percent have both parents working full time, and about 10 percent depend in whole or part on welfare or unemployment insurance payments.

Also, parents who choose inner city private schools, despite having few extra dollars available for tuition payments, have more children per family than the U.S. average family size. About 40 percent of the families have three or more children.

3) Why are these schools attractive? And why do low-income parents sacrifice to use them?:

Our findings here are surprising. First, it is clear that there is great demand for the schools; nearly all have waiting lists. Yet the reason parents choose these schools is not as clear as previous research has suggested. Frequently used, but too simplistic, are explanations

4.

claiming that parents choose these schools only because they teach religion, or because of parental hostility to public schools, or because of family tradition. The best explanation, we believe, is a simple market model drawn from economic theory. Parental choice is a rational process not easily explained, but we have identified the central components in that process. They include the following perceptions of parents: 1) these schools offer quality education; 2) religion and moral values are taught; 3) the schools have a disciplined environment; and 4) the schools exact non-monetary costs from parents in time and commitment, which result in a loyal-"family-like"-partnership between home and school. It is a partnership marked by local control and flexible school policies.

- 4) Catholic inner city schools are not elitist and operate to serve broad community needs:

Two myths about Catholic education are disproven in our study. First, Catholic schools are not elitist. The Catholic schools included in our sample serve a broad population. In entrance requirements, they do not discriminate on the basis of test scores, religion, or race. They do not accept only "the cream of the crop." They employ open-admissions policies, and rarely do they expel students. In fact, there is considerable evidence that these schools more frequently accept "problem" transfer students from public schools than they expel students with behavioral problems from their own schools.

Students are given priority in admissions if their parents are members of the parish which supports the school or if the parents have had other children attend the school.

5.

The second myth disproven is that Catholic schools exist to make converts. Scores of interviews with principals, teachers, and parents revealed no evidence to suggest that that is the case. To the contrary, many schools, particularly those with a large percentage of black students, while providing religious education classes also include inter-faith programs.

5) Despite a high demand and an incredible success rate, these schools face a precarious future:

Survivability of inner city private schools is in doubt. While the demand for these schools increases, as marked by yearly rises in applications, the supply of such schools is decreasing.

Dr. Thomas Vitullo-Martin, in his 1979 study of inner city Catholic schools, has indicated that there is a strong likelihood that many inner city Catholic schools will disappear because "the church appears to have reached its organizational limits for their support." Using data provided by the National Catholic Educational Association, he states that during the 1967-73 period Catholic urban schools declined at a 10 percent rate, while Catholic inner city schools declined at a 20 percent rate. But when he takes into account various problems in definitions of "urban" and "inner city," he presents an adjusted percentage which shows that inner city Catholic schools closed at a rate five times faster than did urban Catholic schools -- from a 1967 high of 1,490 schools to a 1973 low of 1,052.

As Vitullo-Martin has noted, tuition payments for inner city parents frequently amount to as much as 10 percent of the average family income.

6.

Our examination of the faculty composition in inner city private schools underscores the problems faced by these schools in their struggle to survive. We found that 30 percent of the teachers are nuns or brothers, that 75 percent of them have had more than 10 years of teaching experience and only 11 percent have taught less than five years. So age becomes an important factor. Moreover, we know that fewer and fewer men and women are entering religious life and that many teaching religious are leaving or have left the teaching profession. Today there are less than half as many teaching religious as there were a decade ago. So the sources for such highly committed individuals who draw subsistence pay are drying up. And because of the schools' inability to offer financial incentives to attract and retain top-level lay faculty, it appears that inner city private schools are in a bind. Of all the teachers we questioned, nearly one-third had annual salaries in 1977-78 of less than \$5,500 (80 percent religious) and only 13 percent had salaries of more than \$9,500. When we considered only the salaries of lay teachers, we found that 41 percent fit the range of \$5,500 to \$7,999 and 30 percent were in the \$8,000 to \$9,500 range.

Retention of lay teachers is a serious problem for private schools because of the great disparity between the salaries of private and public elementary teachers. In inner city private schools, the average annual salary in 1977-78 was about half that of public school teachers, \$7,654 compared with public school teachers' annual average of \$14,617. The problem is made more acute by the fact that the teachers in the inner city private schools generally have the credentials to move into the public schools.

7.

What this all means is that these inner city private schools, while offering sorely needed quality education for poor minority children and while they are seen by parents who use them as being the "only" hope they have for a decent future for their children, will be forced to close their doors because the church has reached its limits of support, and poor parents cannot stretch their few dollars any further.

Conclusion:

The continuation of this great good taking place in inner city private schools can be greatly insured if parents are provided with a tuition tax credit or a refundable credit. Without such opportunity, low-income parents who already make overwhelming sacrifices for the education these schools provide will suffer even more. A tax credit will not necessarily increase the effectiveness of the schools, but it will provide parents with the power of choice, and that translates into survival for this endangered form of inner city education.



8.

Summary:

A national study of inner city private schools explains a fascinating phenomenon in the education of children of low-income minority parents. The study presents data which shows:

- 1) that poor black and Hispanic parents make overwhelming sacrifices to send their children to inner city private schools;
- 2) that 90 percent of these schools are Catholic schools but have enrollments that are more than one-third Protestant;
- 3) that there is a great demand for the education these schools provide; that the attractiveness of the schools is based on parental perceptions that the schools offer quality education, teach moral and religious values, have a disciplined environment, and exact non-monetary benefits of time and commitment from parents, thus creating a loyal partnership between home and school; that far from being elitist, the Catholic schools have open-admissions policies, rarely expel students, and do not discriminate on the basis of test scores, religion, or race;
- 4) that the attractiveness of the schools is associated with their characteristics of flexibility, parental commitment to the schools, and local control;
- 5) that despite high demand the schools face a precarious future because of rising costs, -- especially in providing adequate salaries to hold faculties which have fewer and fewer nuns and religious men; and
- 6) that a tuition tax credit or refundable tuition credit would not necessarily improve the effectiveness of the schools, but it would give low-income minority parents the power of choice, which translates into survivability for an immensely popular and successful alternative form of education.

**Senator PACKWOOD.** We will conclude today with a panel consisting of William Gallagher, James Phillips, and J. Wayne Hammond.  
Mr. Gallagher.

**STATEMENT OF WILLIAM P. GALLAGHER, EXECUTIVE DIRECTOR, NEW YORK STATE FEDERATION OF CATHOLIC SCHOOL PARENTS, BINGHAMTON, N.Y., ALSO REPRESENTING THE NATIONAL CATHOLIC EDUCATION ASSOCIATION, WASHINGTON, D.C.**

Mr. GALLAGHER. Senator Packwood, honorable members of the staff who have to hang around all day, technicians, those in the audience, members—supporters of S. 550 and opponents of S. 550, my name is William P. Gallagher.

I am executive director of the New York State Federation of Catholic School Parents, and therefore, I represent the parents of 400,000 youngsters attending our schools there.

And also, I a member of the board of directors of the National Forum of Catholic Parents' Organizations, which is a commission of the NCEA. I am representing the teachers and administrators of the almost 10,000 Catholic elementary and secondary schools in the Nation.

But especially I represent the parents of the 3.2 million students who attend our schools throughout the country.

I submitted 10 pages of brilliant testimony, and everything has been said.

I feel like the retreat master at the end of 30 days' retreat. You know, what do you have to say to people after 30 days.

But anyway, I have three arguments that I try to propose in my formal testimony. One is philosophical, the second is historical, and the third is the idea of competition between the two systems, all in support of S. 550.

I think the philosophical argument is the most important. Primarily it says that the parents are the primary educators of their children—and schools are supposed to support parents. And that is true of government education or nongovernment education.

Education in the elementary and secondary level, at least to a certain age, is mandated in this country. And yet, certain parents cannot use a share of their tax dollar, and therefore cannot exercise that right of choice. It was brought out by Mary's argument and many others.

The historical argument has been brought out time and time again. The parochial schools came first in this country and they were funded by government funds.

The common schools, which were really basically Protestant schools, were funded by government funds. Then the common schools somewhere along the line changed into public schools. And somewhere along there, and this was brought out yesterday, too, Catholic school parents were discriminated against.

The textbooks used in those common schools didn't say very nice things about us. And at one point, Bishop Hughes' home in New York was stoned, and the Irish immigrants homes were stoned. It is too bad. But it is part of our history.

So consequently, the historical argument would say that religious affiliated schools came first in America, and were publicly funded.

Bigotry has often reared its ugly head against Catholic school parents in America, and this injustice could be remedied, and should be remedied through the passage of S. 550.

Now the idea of competition in America—that has been brought out by everybody.

Everyone thinks it is a good idea. Dr. Bell was adamant today in his testimony about this.

S. 550 would help competition. We support public education, and we always have.

Let me just tell you a little incident that nobody else can tell because it happened in our family. And yet it is true, and it is a funny story but I think it points out a fact.

God has blessed my wife and me with several children. Two of the little kids were playing cards one day. And the third grader turned to the first grader, and he said, "Dennis, Dennis, you are cheating. You are looking at my cards."

And the first grader, Dennis, looked at him and he said, "Big deal. All I saw was half an ace." [Laughter.]

My point is that public education and nonpublic education together, I feel, is the system of the whole in America. Together they form an ace.

And without something like tuition tax credits, we are liable to lose half of that ace.

In my formal testimony I put in the three most popular arguments against tuition tax credits. They have been discredited through other testimony. But just—the one about constitutionality—I agree with the Senators that public policy comes first, and we feel that S. 550 is good public policy.

Let it be tried in the court.

Professor Scalia yesterday got—he was terrific, incidentally—but anyway, he got into the idea about the distinction between primary and secondary effect. And the only reason I bring it up is that somebody today mentioned it earlier.

Justice White, in his dissenting opinion in a New York case a few years ago—*Mandated Services* case in 1973—had this to say:

The Court strikes down the New York Maintenance Law because its effect inevitably is to subsidize in advance the religious mission of the sectarian schools. But the test is one of primary effect not any effect. The Court makes no attempt at that ultimate judgment necessarily entailed by the standard heretofore fashioned in our cases.

Now maybe, just maybe, if S. 550 is ever tested, the Court will face up to that distinction. And just maybe they will rule in favor of justice as we think they would.

The argument about destroying public schools—I refer you to the "International Panorama of the World Survey of Aid to Independent Schools" by Dr. Daniel McGarry, where he compares schools all over the world—education plans where freedom of choice is supported—apparently, with no diminution of public schools.

My conclusion is, that on the basis of public policy, justice and the cost, Congress and the President cannot afford not to enact S. 550 into law.

Thank you, Senator.

Senator PACKWOOD. Thank you very much.

James Phillips.

**STATEMENT OF JAMES O. PHILLIPS, CHRISTIAN SCHOOLS OF MICHIGAN, YPSILANTI, MICH.**

Mr. PHILLIPS. Thank you, Senator.

I am James O. Phillips, pastor of Faithway Baptist Church. Our church school was one of the founding schools of Christian Schools of Michigan on whose behalf I am testifying.

I thank the committee for this opportunity.

CSM is an organization consisting of approximately 60 Christian schools in Michigan. Our members are primarily independent fundamental church-operated schools.

We are a State affiliate of the American Association of Christian Schools.

I would like to express my appreciation to the committee for having such patience. I certainly would hate to have to sit in your seat. I've gained a new respect for your tenacity. After hearing all of these testimonies, I don't see how you can hear anymore, really.

And I'm sure that I'm not going to see a great deal that hasn't already been said, but I feel that I would like to say these things that are apart from my written testimony.

First of all, it has been said that early education in America was largely the product of the church. The purpose of tax-supported education was to extend this education to all.

It was basically the same type of education. The separation issue has been blown out of proportion.

The early government was not the antagonist of the church or of private education; for that matter neither was the public.

The church, however, was glad for the financial relief. However, the control of the schools passed through to the community, and the bureaucracies ultimately.

With the passing of this control, apparently, went the passing of content in too many cases. The results have been morally and economically disastrous to our Nation.

I hesitate to quote statistics, but since Mr. Moynihan is not here I will give it a shot.

These I have read, and they are not my research. That there are 9 to 10 million alcoholics in America, 20 to 40 million drug users, 22 million homosexuals. Excluding children and elderly, this leaves us with 25 percent of our citizens with a major social problems that curtails their productivity.

Now, what are we asking for. Simply this. Give us some of our money back. We will educate our children to be productive, and supportive of the principles that made America great.

We are not just interested in indoctrinating our boys and girls into theologies of our faith.

Our parents are not asking for welfare. We are not a financial burden to the public education system at present—consuming no space, no utilities, no textbooks, no hot lunch program, no extra-curricular costs. No salaries. We will be healthy for the public school system.

Competition is good. I remember, not too many years ago, that to buy something marked "made in Japan" was to be suspect of buying something cheap.

However, they pulled a sneak attack on us. Because they increased their quality, we have become quality conscious in Amer-

ica. And I now, I believe I can go down to the car market and have a great more confidence in purchasing something that has been made this year, than in recent years—simply because we were prompted to do that by the competitive process.

This is what is happening in our school system. We can not hurt the public school system; we can only help it, with what we are doing.

We will continue to operate our Christian schools, with or without tuition tax credit. But if justice is to be served, and all the citizens to be represented, then what is being proposed by this bill must be granted.

We think that there should be language, however, in this tax credit bill that prohibits discrimination.

Yet our concern is that the existing language is too open-ended, and will allow for future harassment of the Christian schools on the part of some overzealous Government agency.

We are very supportive of tax credits for our parents, however, we are not willing to open our schools to the kind of action the IRS attempted.

We hope that you will reconsider this language and tighten it up in some fashion. Should this language not be changed, CSM would be forced to take an active stance in opposition to the bill.

Thank you.

Senator PACKWOOD. I know the language to which you refer.

Yes, we can guarantee that there will be no racial discrimination—which we think is critical. And Senator Moynihan and I both indicated that if this bill would lead to that, we will withdraw our support, and oppose it.

We guarantee that there will be no discrimination, without at the same time giving the IRS power that goes beyond their legitimate prerogative.

I hope we can come to that.

Mr. Hammond.

#### STATEMENT OF J. WAYNE HAMMOND, ACCELERATED CHRISTIAN EDUCATION, INC., LEWISVILLE, TEX.

Mr. HAMMOND. Thank you, Senator Packwood.

On a brief note, before my testimony, I sent in two versions of the testimony. One, a three-page testimony, at 2:30 a.m. without the professional use of my secretary, and then later, a second, corrected version—a two-page version. I request that this two-page version be recorded. I will share that version at this time.

Senator PACKWOOD. Having typed some of my own things on occasion, I can understand why you prefer the latter. Go right ahead.

Mr. HAMMOND. Mr. Chairman, members of the committee, I represent the interest of Dr. Donald R. Howard, president of Accelerated Christian Education, Inc. Accelerated Christian Education, Inc., in turn, services the curriculum needs and represents the interest of over 4,000 private church schools throughout the United States of America.

The above-mentioned private church schools and the bilateral agreement of our association and provisions dictate a personal touch and a constant cancer for the well-being of the many thou-

sands of Christian students and parents involved with our program.

We extend a word of gratitude to this committee for the opportunity to express our position relating to the Tuition Tax Relief Act of 1981.

Education is a parental responsibility; therefore, the parents should have the right to decide where their children attend school.

The Bible clearly commands that children should be influenced and instructed by the home and the church. Because of such convictions, many Christian parents feel compelled to send their children to private church schools where the philosophy of the Holy Bible is taught and practiced as opposed to the philosophy of humanism which is so prevalent in the government-sponsored schools.

To provide a child with the influences of a godly home and the instructions of God's word at church, and then expose this same child to a school system that disallows the Bible, is an inconsistency that an increasing number of Christian parents cannot accept.

Parents must have the constitutional liberties to determine the educational philosophy under which their children are instructed.

Therefore, many parents have chosen to educate their children in selected, private, tuition-financed Christian schools.

In addition to paying tuition, these parents continue to finance government schools through arbitrary taxation.

If the parents are going to be taxed to support the public school system which they do not use, then they should be provided relief in the form of tax credits, allowing the parents to keep a portion of their income to cover part of their child's educational expenses at the institution of their choosing.

Opponents have expressed a concern that a tuition tax credit for children attending private church schools would jeopardize the stability of the government schools.

The concern focuses upon the possibility of a mass exodus from the public schools and the availability of adequate tax dollars to support the government schools.

We believe that in a free society, the people's constitutional liberties to select an educational system for their children will not destroy either the public school or the private church school, but will serve to make both systems stronger.

If either system fails to serve the purpose of education, as determined by the parents, then the weaker system has its fate in the hands of those it serves.

A free market principle of selection and survival will serve the interest of our future as long as equal opportunities for both systems prevail.

The State has a compelling interest in the church school in areas of fire, health, and safety.

A compelling interest which would allow the state to control the church is unacceptable and would present immediate peril.

The State's compelling interest in areas of safety in facilities is well defined and regulated through local authorities.

No new regulation or registration is necessary to protect children from irreparable harm.

The State's compelling interest in areas of safety in criminal abuse already encompasses statutory regulations which present criminal codes apply.

No new regulation or registration is necessary to protect children from irreparable harm.

We do not favor any bill which would impose restrictions on private church schools in areas of selection of students, selection of curriculum, and selection of personnel.

We do support the principle of antidiscrimination and equal opportunity, but we cannot place a stamp of approval on any open-ended language that would present the opportunity for excessive authority and control by the IRS or any other Governmental agency.

We wish to express our appreciation and congratulations to Senator Packwood and Senator Moynihan for their diligent work and interest in tuition tax relief for parents who feel compelled to provide a Christian education for their children.

In conclusion, we are in general agreement with this concept and with the bill in its present form, but have some reservations about the vagueness of the antidiscriminatory language.

I submit that unless some consideration is given to this area, we may have to withdraw our support, and oppose the bill.

Senator PACKWOOD. I'll say the same thing I did before.

I know the problem. We are going to resolve it. I appreciate your calling it to our attention.

With that, we will conclude these hearings.

[The prepared statements of the preceding panel follow:]

Testimony on S.550

Presented before

the Subcommittee on Taxation and Debt Management  
of the Senate Committee on Finance - June 4, 1981

Presented for the National Forum of Catholic

Parent Organizations - a Commission

of the National Catholic

Educational Association

and

The New York State Federation of

Catholic School Parents

Delivered by William P. Gallagher

Member - Executive Committee of NFCPO  
and Executive Director, NYSFCSP



My name is William P. Gallagher. Today, I represent the National Forum of Catholic Parent Organizations, a Commission of the National Catholic Educational Association. The NCEA membership includes the professional staffs of 10,000 Catholic elementary and secondary schools throughout the country. I come to you today, however, not only as a representative of teachers and administrators of these schools, but especially as a parent representing all those parents who use these schools. I also am the Executive Director of the New York State Federation of Catholic School Parents. I work for the parents of the 400,000 youngsters who have chosen Catholic elementary and secondary schools in New York State for their children. Thank you for allowing me to testify today for these thousands of parents both in New York State and throughout the country in support of S.550.

My testimony today is based on the premise that the enactment of S.550 into law would be good for the country. It would result in good public policy and it would correct almost two centuries of discrimination. I will endeavor to present and develop briefly three arguments to show how S.550 would produce these two results. I will then present three arguments commonly proposed against S.550 and endeavor to point out the fallacies of these arguments.

1) Philosophical Argument - Parents are the primary educators of their children and therefore, should have the freedom to choose various educational programs for their children. This freedom has been assured by the Supreme Court in *Pierce v. Society of Sisters* in 1925.

But, in practice, inflation and the high cost of education prevent many parents from exercising this right.

Therefore, the government somehow should help parents meet the cost of education for their children. That tuition tax credits is a practical way for the government to help parents will be brought out in our other arguments.

It seems to me that almost everyone today would accept the major premise

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that parents have the primary responsibility for the education of their children. Teachers act in the place of parents. It is the school's responsibility to reinforce the values of the parents. Again, most professional educators and philosophers seem to accept this role of the school. The government's role in education is not to decide basically what should be taught but rather to supply funds to allow parents to make a choice of educational programs for their children. This necessity of choice seems especially urgent at the elementary and secondary level where education in the United States is mandated and where, according to many psychologists, children's values are formed.

I'm not going to spend a great deal of time trying to prove that educational costs have been spiraling, making a choice of nonpublic schools an impossibility for millions of parents. How many of us could pay the cost-per-child for our own children's education from kindergarten through graduate level? Very few Americans today could pay this amount. We rely on the tax structure because wise leaders in the beginning of our country decided that education, for all children, at least through high school, was good public policy.

That tuition tax credits would be a wise and prudent way for the government to help will be brought out throughout the rest of our testimony.

2) Historical Argument - Opponents of tuition tax credits would have us think that public schools have always been the bulwork of democracy in the United States, and as such, were the only schools for which tax dollars could be used. But let's take a brief look at the history of formal education in the United States.

Until the 1700's, there were no schools in America. Children learned through tutoring and apprenticeship programs.

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During the early 1700's, formal schools were established. These schools were sponsored by Church groups. Education was not considered a function of the State. During the colonial period, Lutherans had 400 schools. Presbyterians and Episcopalians also had quite a few schools.

About 1800, "Common Schools" were established. These were non-denominational Protestant schools. Laws were passed to fund Common Schools from government funds. Religiously-affiliated schools belonging to specific sects shared in the same funding and were recognized as educational agencies employed by the State.

Between 1830 and 1850, great numbers of immigrants were coming to America, many of whom were Catholic. "Native" Protestants became alarmed. Protestant leaders were willing to give up their own parochial schools to join the Common School Movement. Protestant leaders agreed on two principles:

- 1) Bible should be read in public schools
- 2) Public funds should not be used for parochial schools.

Textbooks used in these Common Schools were often biased and reflected the bigotry of the day. Terms like "deceitful Catholics" and references to the Pope as "man of sin, mystery of inequity, son of perdition" could be found in the textbooks used in Common Schools.

In 1800, the first Catholic school was founded in New York City. By 1840, there was a fair number of Catholic schools in existence in the colonies.

In 1841, Catholics sought public funds for Catholic Schools. The measure was soundly defeated. Bishop Hughes then campaigned to have funds go just to Common Schools in New York City thinking that the Public Schools Society which controlled the Common Schools in the City would give up all religion and become secular. The Bishop reasoned that a secular school would be better for

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Catholic children at that time than the bigotry associated with Protestant Schools. The Bishop won. That night the streets of New York were filled with mobs which pursued Irish immigrants and stoned Bishop Hughes' home.

Somewhere along the line, Common Schools became "public schools" but these public schools retained the flavor of Protestant religion for a long time as the philosophy of public schools. In the meantime, the foundation of "secular humanism" was being laid as the philosophy of public schools although not recognized in many circles.

In those few cases where laws were passed to attempt to relieve the double taxation suffered by Catholic school parents, the Courts have struck down the programs.

This short recounting of the development of formal schooling in the United States is included here, not to disparage in any way the contributions of public schools but simply to point out that: a) religiously-affiliated schools came first in America and were publicly funded b) bigotry has often reared its ugly head against Catholic school parents in America and c) this injustice to Catholic school parents should be remedied through the passage of S.550.

3) Need for Competition - A fear has been expressed (but never justified) time and time again, that passage of S.550 would lead to a terrible weakening, maybe even to the demise of public schools. We will reply to this fear later in this testimony. I have an opposite fear (which I'll not try really to justify) that the defeat of S.550 might lead to a terrible weakening if not the demise, of most nonpublic elementary and secondary schools. Successful passage of S.550 on the other hand will lead to a healthy competition between public and nonpublic education, a condition which has been described as desirable by educators, historians, sociologists and economists throughout our history.

Helen Baker, writing for American Civil Liberties Union said, "We believe

the right to an education is so basic that unless there is some way to challenge the monolithic structure of compulsory institutionalization, all liberty will be lost. We must challenge the existing compulsory education laws to allow real alternatives to public school education to exist. We need diversification, change, and challenge; we need 'schools' that students want to go to and that parents can exercise choice in. ('In loco parentis,' for instance, is a mockery in a compulsory school system.) In time these alternative efforts may become the new public schools of America." (ACLU, No. 286, April, 1972).

Dr. Ernest L. Boyer, when he was the United States Commissioner of Education, in a speech at the Nonpublic School National Convention, November 29, 1977, said, "Private education is absolutely crucial to the vitality of this Nation, and public policy should strengthen rather than diminish these essential institutions. After all, private education is rooted deep in this Nation's heritage. The first schools and colleges in this country were, in large part, private institutions. Distinguished leaders in all walks of life have studied at nonpublic schools. And many of America's independent institutions have contributed brilliantly--and enduringly to this Nation's heritage."

Dr. Terrel Bell, in Senate Hearings pertaining to his confirmation as Secretary of Education said, "I think generally we all ought to be concerned about strengthening the private sector in education...I think the schools and colleges are in a lot of trouble during these inflationary times. I think we need the variety and the options and the choice...that private schools provide."

Maybe a true family anecdote will help make my point. God has blessed my wife and me with several children. A few years ago two of the little boys were playing cards on the floor and I was reading a paper. The game seemed to be progressing nicely. Suddenly the third grader got a little excited. He said, "Dennis, Dennis, you are cheating. You are looking at my cards." Dennis who was in the first grade, looked at him very calmly and said "Big deal. All

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I saw was half an ace."

The point is that in this country we have a good thing going in education. We have government schools and non-government schools. If you want to look at it, each one of these is half an ace. I submit to you that if we don't make parental choice a reality in this country we might lose half of this ace.

These are several arguments proposed by opponents to S.550. I would like to present the three perhaps most commonly heard and then endeavor to show the fallacies of the arguments.

1) S.550 might be unconstitutional. - Opponents to S.550 say this bill might be unconstitutional since it would be contrary to the First Amendment's prohibition of establishing a government religion. Since I am not a lawyer, I will not try to predict what the Supreme Court will rule on S.550 if it gets the opportunity. However, I would like to pass on to you an observation made by Justice Byron White. Justice White, in his dissenting opinion in a New York case a few years ago (Mandated Services, 1973) had this to say, "...the Court strikes down the New York maintenance law...because its 'effect' inevitably is to subsidize and advance the religious mission of sectarian schools. But the test is one of 'primary' effect not any effect. The Court makes no attempt at that ultimate judgment necessarily entailed by the standard heretofore fashioned in our cases".

It seems to me that the "ultimate judgment" Justice White is referring to means a distinction between primary and secondary effect. One of these days the Court will face up to this distinction. Tuition tax credit legislation will give the Court a perfect opportunity to rule in favor of justice.

Since there is some excellent legal opinion predicting the constitutionality of S.550, the prudent course for Congress would seem to be to

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judge S.550 on its merits as good public policy and leave the ruling on constitutionality to the Supreme Court.

2) S.550 would destroy public schools. - Would passage of S.550 lead to a severe weakening of public schools or even its demise? Truthfully, I don't know. However, it certainly would not seem so. Let's look at the situation worldwide.

Children in the following countries can study religious and moral values in nongovernment schools without the loss of tax funds for their education in secular subjects:

NORTH  
AMERICA:

Canada

EUROPE:

Austria  
Belgium  
Denmark  
England  
France  
Finland  
Holland  
Ireland  
North Ireland  
Norway  
Portugal  
Scotland  
Spain  
Switzerland  
Wales  
West Germany

LATIN  
AMERICA:

Argentina  
Bolivia  
Brazil  
Chile  
Colombia  
Costa Rica  
Dominican  
Republic  
Ecuador  
Guatemala  
Haiti  
Honduras  
Jamaica  
Mexico  
Panama  
Peru  
Salvador  
Venezuela

ASIA AND

OCEANIA:

Australia  
India  
Indonesia  
Japan  
Laos  
New Zealand  
Pakistan  
Thailand  
Taiwan

NEAR EAST:

Iran  
Iraq  
Israel  
Jordan  
Lebanon  
Syria

There has been no abandonment of public education in any of these countries (cf. International Panorama: World Survey of Aid to Independent by Daniel D. McGarry).

Perhaps it is not ad rem, but it is interesting to note that children in the following countries cannot study religious and moral values in school, or, if they do, they suffer the loss of tax funds for their education in secular subjects:

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Albania	Hungary
Bulgaria	Republic of South Africa
China	Russia
Ceylon	Turkey
Cuba	<u>United States</u>
East Germany	<u>Yugoslavia</u>

Robert H. Healey, Professor of American Church History at the Dubuque Theological Seminary and a Presbyterian Minister, recently spent a year in France studying the effect of the Debré education law in France which gives tax aid under the form of contracts to nongovernment schools.

Having completed his study, Dr. Healey wrote, "This, then, is one lesson from France: all the fearful consequences that are predicted by sincere Americans to be the inevitable result of providing government aid for non-public schools simply did not take place.....it is valuable to know that such assistance need not divide the community or nation, nor proliferate ineffective school systems, *nor damage public education* (italics added), nor infringe upon the intellectual freedom of teachers, nor subject pupils to offense of conscience. And if we can clear the decks of these definitely unwanted 'inevitabilities,' perhaps we can turn our attention more effectively to the fundamental questions of national ideals, historical tradition, educational purpose, and constitutional interpretation which greatly need reassessment in America at this time." (The French Achievement, Robert H. Healey. Paulist Press, New York, 1974, p. 102).

3) S.550 would be too costly - It has been estimated that when fully implemented, S.550 would cause a loss of revenue of 4 to 6 billion dollars. About two-thirds of tuition tax credits would go to parents of college students. About 80% of these credits would go to parents with offspring in public colleges.

Let's be liberal in the predicted loss of revenue for credits at the elementary and secondary level. Based on a \$500 maximum credit for each of the 5 million students now in elementary and secondary schools, the estimated



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loss of revenue would be \$2.5 billion. However, if these 5 million students were in public schools, the estimated cost to taxpayers would be \$10 billion based on a conservative estimate of \$2000 per pupil cost in elementary and secondary schools. In New York State, the per pupil cost in public schools is closer to \$3,500.

An education tax credit would be very inexpensive to administer. Probably a line would be added to tax forms. A receipt would be issued by a school for tuition paid. Audits by the IRS would continue as always.

A tuition tax credit ties in very nicely with the philosophy of general tax cuts. Tax credits are a reduction in taxes and in the case of education tax credits would be given to redress the inequity of nonpublic school parents having to pay twice for education, and as a reward for saving other taxpayers from a greater burden.

Tax credits would not be a subsidy for the wealthy. According to U.S. Census Bureau figures, the vast majority of nonpublic school families have low to moderate incomes. An estimated 62.7% of the recipients would have family incomes under \$25,000 per year (School Enrollment--Social and Economic Characteristics of Students: October, 1978, Population Characteristics, U.S. Bureau of the Census, October, 1979). In fact, the typical family with children in nonpublic elementary and secondary schools has an income between \$10,000 and \$20,000 annually. Census Bureau figures:

Under 5,000	2.7%	11.2% under \$10,000
\$5,000-9,000	6.5%	27.0% under \$15,000
\$10,000-14,999	15.8%	45.6% under \$20,000
\$15,000-19,000	18.6%	OR 62.7% under \$25,000
\$20,000-24,999	17.1%	
Over \$25,000	27.1%	
Unreported	10.2%	

One of the most noteworthy features of the proposal is the equal tax treatment it extends. An income tax deduction would be regressive -- high-

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income taxpayers would derive greater benefits than lower-income people. With tax credits, all families receive the same benefits. Moreover, a \$250 tax credit can mean the difference between having a choice and having no choice.

One final observation about costs. Although with the passage of S.550, we don't see a major shift in student population from public schools to non-public schools, tuition tax credits might result in a small shift. For every pupil who transfers to a nonpublic school, there would be a net savings in state and local taxes of \$1,000 per year. Hence, if a tuition tax credit caused a total shift of 2.5 million pupils or a mere 6 percent of the total public school enrollment, this would result in a net cost reduction of \$2.5 billion, just sufficient to cover the full cost of the tax credit (federal, state and local) saved.

So, rather than to argue that we can't afford tuition tax credits, we maintain that we, as a nation, can't afford not to pass S.550.

I trust this testimony has shed a little light on the subject of tuition tax credits in general, and S.550 in particular, from the perspective of Catholic school parents. We feel S.550 would not only result in good public policy, but it's really a matter of social justice. Therefore, we urge you members of this august panel to recommend the passage of S.550 to the full Senate Finance Committee and we further urge each of you to support the bill when it gets to the floor.

Thank you for the opportunity to testify on behalf of Catholic School parents throughout the nation.

Respectfully submitted,

*William P. Gallagher*  
William P. Gallagher

A Summary of Testimony Submitted  
by William P. Gallagher

In my testimony I introduced and developed briefly three arguments in favor of S.550:

1) Philosophical Argument - Parents are the primary educators of their children and as such, have the right and obligation to choose educational programs for their children. Government's role is not to mandate what should be taught but rather to allow the parents a share of their own tax dollars to be used for their own educational choice.

2) Historical Argument - I presented a brief history of nonpublic education in the United States which seemed to indicate that a) religiously-affiliated schools came first in America and were publicly funded, b) bigotry has often reared its ugly head against Catholic school parents in America and c) this injustice to Catholic school parents should be remedied through the passage of S.550.

3) S.550 would strengthen competition which would be good for all education in America.

Then, I reported three arguments against S.550 and attempted to point out the fallacies of these arguments.

1) S.550 might be unconstitutional. Since no one is sure of this issue and since reputable lawyers argue on both sides of this question, why not judge S.550 on its merits as good public policy and allow the Supreme Court an opportunity to rule on its constitutionality!

2) S.550 might terribly weaken public education. The experience in other nations where parents are helped by the government to choose nonpublic schools, has not led to a weakening of public education in those countries.

3) S.550 might be too costly - I attempted to show that, relatively speaking, S.550 would not be too costly. In fact, a slight shift of population from public to nonpublic schools would pay for the cost in savings in state and local taxes.

My conclusion is that on the basis of public policy, justice, and cost, Congress and the President cannot afford not to enact S.550 into law.

Testimony on  
Tuition Tax Credits

June 4, 1981

Christian Schools of Michigan  
7306 E. Atherton Rd.  
Flint, MI 48507

Dr. James O. Phillips

Outline

- I. Introduction
- II. Body
  - A. Christian Schools were started for religious freedom
  - B. CSM supports relief to parents through tuition tax credits
  - C. Concerns about open-ended discrimination language
- III. Conclusion

I am James O. Phillips, pastor of Faithway Baptist Church. Our church school was one of the founding schools of Christian Schools of Michigan (CSM) on whose behalf I am testifying. I thank the Committee for this opportunity. ~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~

CSM is an organization consisting of approximately 60 Christian schools in Michigan. Our members are primarily independent fundamental church-operated schools. We are a state affiliate of the American Association of Christian Schools. CSM was started in 1976 as a response to state attempts to impose controls on our schools. We have since attempted to protect Christian schools from these kinds of controls.

Christian schools are a relatively new phenomenon. Most of our schools have been started within the last 10 years. My school was started in 1971. Our schools were started for one reason, and one reason only. Our concern for the religious upbringing of our children.

We believe that all education is inescapably religious. Religious education is not just a Bible class or a chapel service. All education is laced with philosophy and values. It is impossible to study history without placing it in a religious or a-religious context. History viewed as what man has done is totally different from history viewed as what God has done. While the latter has religious overtones, the overtones of the former are no less religious. To view history in the absence of God, inculcates in students a view of life, a philosophy or a-religion if you will. This is no less religious than a Bible class.

Christian parents have a responsibility to educate their children "in the nurture and admonition of the Lord." It is their responsibility not the State's. Parents have begun to realize that the education of the public schools is teaching a religion contrary to their own, a non-theistic religion, but a religion nevertheless. Colossians 2:8 says, "Beware lest any man spoil you through philosophy and vain deceit, after the tradition of men, after the rudiments of the world,

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and not after Christ." Yet public education, for the most part is doing just what the Bible says not to. Public education has taught our children "If it feels good, do it"; situational ethics; "Me first"; and more. Public education has assaulted the very foundation of our faith with no allowance for rebuttle.

To be true to our faith, our parents must send their children to a school that doesn't violate our religious convictions. One of our former State Senators, Gary Byker, summed it up best a few years ago when he said, "Perhaps of the most difficult obstacles we have to contend with is the fact that people believe that government education is religiously neutral. As we are all aware, all education is inescapably religious. In essence, the government schools are America's only established church and the government school teachers are the tenured priesthood of America." From this feeling has grown the Christian school movement.

Why must parents be made to pay twice to educate their children in order to assure that their religious beliefs will not be violated? Does not the Constitution protect the "free exercise of religion?" There are those who would say "No." There are those who would say, "If you want a Christian education that you must pay twice", yet that is totally unfair.

Christian parents are required under penalty of law to send their children to school. They are taxed for that child's education and told that they may now send him to a "free" school. Yet if the school teaches something that violates the religious convictions of that parent, the parent has but three choices. He may ignore his religious convictions, in which case his free exercise has been restricted. He may refuse to send his children to school at all and face criminal charges that may end in the removal of the child from his home. Or finally he may pay for his child's education a second time.

Why is education the only government benefit that must be redeemed at a government institution? Why can't education be funded like social security? One doesn't have to live in a government retirement home to collect social security. Why

cannot education benefits be distributed on an individual basis so that the family can decide what is best for the child?

We believe that a tuition tax credit is a first step in that direction. A tax credit of \$250 doesn't seem like much but it will bring some partial relief to parents now sending their children to Christian schools, and it will allow other parents to make a choice in their children's education.

CSM believes that the only way to provide for religious neutrality in education is to allow all people the opportunity to be educated in the school of their choice. S 550 we believe is a step in that direction.

We have one concern however with S 550 that may require us to withdraw our support. Christian schools have been under attack in many states in recent years. We are currently in court in Michigan. The last two and one half years have likewise seen attacks from federal agencies. One of the most visible was the Internal Revenue Service. The member schools of CSM are not discriminatory. Our schools were not set up as white flight schools. Yet our schools were under the gun in 1978 by the IRS on the question of racial discrimination. We were "guilty until proven innocent."

We think that there should be language in the Tax Credit bill that prohibits discrimination, yet our concern is that the existing language is too open-ended and will allow for future harassment of the Christian schools on the part of some over-zealous government agency. We are very supportive of tax credits for our parents, however, we are not willing to open our schools up to the kind of action the IRS attempted. We hope that you will reconsider this language and tighten it up in some fashion. Should this language not be changed, CSM would be forced to take an active stance in opposition.

I would like to thank the sponsors of the bill for their concerns on other issues in the bill. You have been very responsive to the concerns of Christian schools and parents, and we are grateful.

Once again, thank you for the opportunity to testify on this important piece of legislation.

Testimony to the Senate Finance Committee  
 United States Senate  
 Re: Senate Bill 550  
 J. Wayne Hammond, Area Coordinator  
 Accelerated Christian Education, Inc.  
 June 4, 1981

Mr. Chairman, Members of the Committee, I represent the interest of Dr. Donald R. Howard, ~~Ph.D.~~, President of Accelerated Christian Education, Inc. Accelerated Christian Education, Inc., in turn, services the curriculum needs and represents the interest of over four thousand (4,000) private church schools throughout the United States of America. The above mentioned private church schools and the bilateral agreement of our association and provisions dictate a personal touch and a constant concern for the well-being of the many thousands of Christian students and parents involved with our program.

We extend a word of gratitude to this committee for the opportunity to express our position relating to the "Tuition Tax Relief Act of 1981".

I.

Education is a parental responsibility; therefore, the parents should have the right to decide where their children attend school. The Bible clearly commands that children should be influenced and instructed by the home and the church. Because of such convictions, many Christian parents feel compelled to send their children to private church schools where the philosophy of the Holy Bible is taught and practiced as opposed to the philosophy of humanism which is so prevalent in the government-sponsored schools.

To provide a child with the influences of a godly home and the instructions of God's word at church, and then expose this same child to a school system that disallows the Bible, is an inconsistency that an increasing number of Christian parents cannot accept. Parents must have the Constitutional liberties to determine the educational philosophy under which their children are instructed.

II.

Therefore, many parents have chosen to educate their children in selected, private, tuition-financed Christian schools. In addition to paying tuition, these parents continue to finance government schools through arbitrary taxation. If the parents are going to be taxed to support the public school system which they do not use, then they should be provided relief in the form of tax credits, allowing the parents to keep a portion of their income to cover part of their child's educational expenses at the institution of their choosing.



Opponents have expressed a concern that a tuition tax credit for children attending private church schools would jeopardize the stability of the government schools. The concern focuses upon the possibility of a mass exodus from the public schools and the availability of adequate tax dollars to support the government schools.

We believe that in a free society, the people's Constitutional liberties to select an educational system for their children will not destroy either the public school or the private church school, but will serve to make both systems stronger. If either system fails to serve the purpose of education, as determined by the parents, then the weaker system has its fate in the hands of those it serves. A free market principle of selection and survival will serve the interest of our future as long as equal opportunities for both systems prevail.

### III.

The state has a compelling interest in the church school only in areas of fire, health, and safety. A compelling interest which would allow the state to control the church is unacceptable and would present immediate peril.

The state's compelling interest in areas of safety in facilities is well-defined and regulated through local authorities. No new regulation or registration is necessary to protect children from "irreparable harm".

The state's compelling interest in areas of safety from criminal abuse already encompasses statutory regulations which present criminal codes apply. No new regulation or registration is necessary to protect children from "irreparable harm".

### IV.

We do not favor any bill which would impose restrictions on private church schools in areas of (1) selection of students, (2) selection of curriculum, and (3) selection of personnel.

We do support the principle of anti-discrimination and equal opportunity, but we cannot place a stamp of approval on any open-ended language that would present the opportunity for excessive authority and control by the I.R.S. or any other governmental agency.

We wish to express our appreciation and congratulations to Senator Packwood and Senator Moynihan for their diligent work and interest in tuition tax relief for parents who feel compelled to provide a Christian education for their children.

In conclusion, we are in general agreement with this concept and with the bill in its present form, but have some reservations about the vagueness of the anti-discriminatory language. I submit that unless some consideration is given to this area, we may have to withdraw our support, and oppose the bill.

[Whereupon, at 3:45 p.m., the hearing adjourned, subject to the call of the Chair.]

[By direction of the chairman the following communications were made a part of the hearing record:]

Hearings of the  
Subcommittee on Taxation  
and Debt Management of  
the Senate Finance Committee  
on S. 550

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Testimony of Lydia Kess  
on behalf of  
The National Jewish Commission  
on Law and Public Affairs ("COLPA") and  
Torah Umesorah, The National  
Society For Hebrew Day School  
and  
Agudas Horabonim of the United States  
and Canada  
Agudath Israel of America  
National Council of Young Israel  
Rabbinical Alliance of America  
Rabbinical Council of America  
Union of Orthodox Jewish  
Congregations of America

June 4, 1981  
Washington, D. C.

Mr. Chairman, and members of the Subcommittee, my name is Lydia Kess. I am an attorney, and a member of the Board of Directors of the National Jewish Commission on Law and Public Affairs, which goes by the acronym of COLPA. COLPA is a voluntary association of attorneys organized to represent the interests of the Orthodox Jewish Community on matters of public concern. I appear here today in support of the constitutionality of S. 550 on behalf of COLPA and Torah Umesorah, The National Society for Hebrew Day Schools. My statement is also joined by the following national Orthodox Jewish organizations: Agudas Horabonim of the United States and Canada, Agudath Israel of America, National Council of Young Israel, Rabbinical Alliance of America, Rabbinical Council of America and the Union of Orthodox Jewish Congregations of America. I wish to thank you on their behalf for this opportunity to explain our position on the issues before the subcommittee. We plan to submit a comprehensive written statement which will set forth our position in greater detail. At this point I will, with your leave, merely summarize parts of that statement.

S.550 proposes an amendment to the Internal Revenue Code and like the balance of the Code, will draw its basic constitutionality from the 16th Amendment which explicitly

grants Congress the "power to lay and collect taxes on incomes, . . . ." U.S. Const. amend XVI. This threshold characteristic is of prime significance. Both in terms of legal analysis and the permissible use of the taxing power as a tool of congressional policy it sets this tuition tax credit somewhat apart from a long list of state endeavors which have sometimes passed, and sometimes failed to pass, muster under the First Amendment. We will turn to the teachings of some of those cases in due course. Let us focus at the outset on the essential nature of the Internal Revenue Code so as to establish that availability of a credit does not constitute government "aid" in the time worn sense of the term.

Tax Credits are no Different Than Deductions  
and are Presumptively Constitutional.

We are all aware of the basic interchangeability of credits and deductions under the Code. For example, prior to December 31, 1978 an individual could choose between a credit for political contributions under § 41 and a deduction under § 218; at present only a credit is available. Similarly, a credit is now available for so-called child care expenses under § 44A, whereas prior to 1976 comparable expenses were the basis for deductions under § 214. Congress recognizes that a credit mechanism simply constitutes a method for avoiding differential treatment of taxpayers under a progressive

rate system or of taxpayers who do, or do not, itemize deductions. Moreover, as Professor Bittker of Yale has cogently stated: As any first year law student knows, there is more than one way to skin a cat: deductions, credits, rate schedules, etc. Bittker, 78 Yale Law J. 1285, fn. 11 at p. 1289.

Having established that credits and deductions are indistinguishable in their intrinsic character, it is of utmost significance in order to put the constitutional issue before this Committee in perspective to recognize that a case has never been brought before the Supreme Court suggesting that allowance of deductions for contributions to churches violates the First Amendment, despite the fact that as long ago as 1962 religious organizations were receiving more than 60% of all itemized charitable contributions. Nor has there been a constitutional challenge to § 107 of the Code which excludes the rental value of a home furnished to a minister of the gospel, nor to § 501 of the Code which exempts churches from tax.

Tax Credits and Deductions are Not  
Synonymous with Government Payments.

Commentators of unimpeachable repute, far removed from the front lines of parochial school issues, who have considered private philanthropy from many points of view have

considered a host of alternatives and admit the difference between matching grants or other government payments on the one hand and tax deductions on the other. See Hopkins, The Law of Tax-Exempt Organizations, 2d ed, Chapter 3 (1977); Boris I. Bittker, Charitable Contributions: Tax Deductions or Matching Grants, 28 Tax L. Rev. 37 (1962).

However, it has been suggested by one Harvard professor that the tax system has been substantially subverted from its revenue raising function to the point where it now involves 100 items amounting to 200 billion dollars which are reported as tax expenditures in the government budget, and that tax expenditures are subsidies to homeowners and others rather than the consequence of an attempt to fairly measure net income. Surrey, Our Troubled Tax Policy and Proper Paths to Change, Taxation with Representation Fund, 1981. Professor Bittker takes vigorous issue with this contention, Bittker, Taxes and Civil Rights: Constitutionalizing the Internal Revenue Code 82 Yale Law J. 51 (1972). I will not try your patience with an explanation of what would be an ideal tax base which solely measures net income and ability to pay.

I submit that the fallacy in concluding that every exemption, deduction or credit is a government subsidy and hence constitutes a "state action" is obvious when one considers the mind boggling implications of the potential explosion

in litigation if citizens could freely contest the tax treatment of their fellows.

Constitutional Issues.

As is generally known the First Amendment, provides in part that

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . .

A. In applying the prohibition against an "establishment of religion" the Supreme Court has developed its now hallowed "tripartite" test:

"First, the statute must have a secular legislative purpose. . . . Second, it must have a 'primary effect' that neither advances nor inhibits religion. . . . Third, the statute and its administration must avoid excessive government entanglement with religion." Meek v. Pittenger, 421 U.S. 349, 358 (1975) (citations omitted).

Notwithstanding the certitude exuded by opponents of S. 550 as to the application of this test the Supreme Court has encountered much difficulty with it. Indeed in the very same case cited as principal authority by such opponents, (Committee for Public Education & Religious Liberty v. Nyquist, 413 U.S. 756 (1973)), the Court acknowledged that the test is more easily stated than applied:

For it is evident from the numerous opinions of the [Supreme] Court, and of Justices in concurrence and dissent in the leading cases applying the Establishment Clause, that no "bright line" guidance is

afforded. Instead, while there has been general agreement upon the applicable principles and upon the framework of analysis, the Court has recognized its inability to perceive with invariable clarity the "lines of demarcation in this extraordinarily sensitive area of constitutional law." Lemon v. Kurtzman, 403 U.S. 602, 612 (1971). 413 U.S. at 761, n. 5.

Moreover, although the Court has most certainly taken what we would view as an extreme position with particular statutes it has never been as extreme in its conceptual approach to the "establishment" problem. For example, in Tilton v. Richardson, 403 U.S. 672 (1971), Chief Justice Burger stated in his lead opinion:

the simplistic argument that every form of financial aid to church-sponsored activity violates the Religion Clauses was rejected long ago in Bradfield v. Roberts, 175 U.S. 291 (1899). And that the issue is "not whether some benefit accrued to a religious institution as a consequence of the legislative program, but whether its principal or primary effect advances religion." 403 U.S. at 679.

In Hunt v. McNair, 413 U.S. 734 (1973), Mr. Justice Powell pointed out that

the Court has not accepted the recurrent argument that all aid is forbidden because aid to one aspect of an institution frees it to spend its other resources on religious ends, 413 U.S. at 743.

And in Meek v. Pittenger, 421 U.S. 349 (1975), Mr. Justice Stewart again reminded us that

it is clear that not all legislative programs that provide indirect or incidental benefit to a religious institution are prohibited by the Constitution. 421 U.S. at 359.



B. I am aware that the members of this Subcommittee have been furnished with an analysis by a legislative attorney in the Congressional Research Service which reaches an adverse conclusion concerning the constitutionality of the bill. I must respectfully disagree, but given the existence of that analysis, I shall not set the stage as fully as would otherwise be necessary. Instead I will limit my remarks to emphasizing certain cases and points which are of particular significance.

Regan.

It seems most curious that the 1980 decision of the Supreme Court upholding direct cash reimbursement to New York schools for certain educational services is not cited in the aforementioned study. In this decision, Committee for Public Education and Religious Liberty v. Regan, 444 U.S. 646 (1980), the Court once again rejected "the recurring argument that all aid is forbidden because aid to one aspect of an institution frees it to spend its other resources on religious ends." It went on to state, in what I hope will be a prescient phrase, that its decisions

"avoid categorical imperatives and absolutist approaches at either end of the range of possible outcomes". 48 L.W. 4173

and that such a course

"sacrifices clarity and predictability for flexibility". Id.

due to the continuing interaction between interpreting the Constitution and the States' efforts to educate their youth. Certainly, it would appear that the Supreme Court, in approving direct payments to parochial schools as reimbursement for costs incurred through the provision of educational services, has once again eschewed a doctrinaire approach to the parochial question.

Nyquist.

Let us turn next to the Nyquist case which is misread on occasion as authority for the proposition that a tax credit is unconstitutional. The Court described the arrangement as a formula intended to assure receipt of the net benefit comparable to tuition grants for lower income families, which were available under a companion New York statute, and noted that it was not a "genuine tax deduction" which relieved the Court of the need to decide whether that form of benefit was constitutionally acceptable. fn 49, 413 U.S. 756, at 790. What was at issue in Nyquist was a sliding scale allowance, calculated in light of the number of the taxpayer's dependents attending non public school and his adjusted gross income, which was not reflective of amounts paid for non-public school tuition. A tax credit is quite a different animal.

It is a dollar for dollar reduction in tax liability which is computed by reference to actual income or expenditures of the taxpayer. Unlike the Nyquist formula, it is not grounded in hypotheticals extrinsic to the measurement of net income.\*

Walz.

Finally there is much which is especially germane to the issue posed by tax credits in the sole Supreme Court decision to-date which directly addresses a tax benefit, Walz v. Tax Commission of the City of New York, 397 U.S. 664 (1970). In Walz, the Court upheld the constitutionality of a tax exemption for churches and emphasized a point that is often overlooked, i.e., that its task is to find a court of constitutional NEUTRALITY between the two religion clauses. Its

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\* Another ostensible precedent, Kosydar v. Wolman, 353 F.Supp. 744 (S.D. Ohio 1972) aff'd mem. 413 U.S. 901 (1973), decided in the same term as Nyquist likewise did not involve a genuine income tax credit. Rather the Ohio statute allowed as a credit an amount not in excess of the sum of the taxpayer's state income, excise, sales and property taxes; these latter three form general revenue funds of the state and are not segregated in individual accounts. Therefore, the Ohio statute resulted in a reimbursement grant out of general funds. Similarly, the New Jersey statute which was struck down in Public Funds for Public Schools of New Jersey v. Bryne, 590 F.2d 514 (3d Cir. 1979) aff'd mem. 442 U.S. 907 (1979) allowed a flat \$1,000 exemption for each dependent in a nonpublic school. Such a proviso also fails to reflect the taxpayer's expenditures.

task has been to walk what it characterized as a "tight-rope" to preserve the autonomy and freedom of religious bodies while avoiding any semblance of established religion. 397 U.S. at 672. The Court held that

"The grant of a tax exemption is not sponsorship since the government does not transfer part of its revenue to churches,"

and held further that

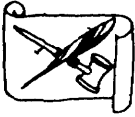
"There is no genuine nexus between tax exemption and establishment of religion." 397 U.S. at 675.

J. Brennan's concurring opinion also stressed that exemptions are not the equivalent of governmental subsidies which would constitute impermissible state involvement with religion. *Id.* at 680.

#### CONCLUSION

As a tax credit measure, no one can seriously dispute that a secular purpose underlies S.550, and that it cannot be said to foster excessive entanglement between Church and State. The remaining litmus test is whether the statute will have a primary effect that advances religion. The term "primary" has been defined by the Supreme Court to mean "principally" or "of first importance"; the Supreme Court has rejected the contention that a purpose is "primary" simply because it is "substantial." Malat v. Riddell, 383 U.S. 569 (1966). Plainly, the principal effect of S. 550 is to assist

parents in their choice of schools, not to advance religion.  
Therefore, we believe it should be found to be constitutional.



National Coalition for  
**PUBLIC EDUCATION AND RELIGIOUS LIBERTY**

Suite 613 • 1201 Sixteenth St., N.W., Washington, D.C. 20036 • (202) 833-5412

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Joanne Goldsmith

June 2, 1981

Robert E. Lightizer  
 Chief Counsel  
 Senate Committee on Finance  
 Room 2227  
 Dirksen Senate Office Building  
 Washington, D.C.

Dear Mr. Lightizer:

The enclosed statement by Florence Flast, Vice President of this organization is submitted for the record on the issue of tuition tax credits.

Sincerely,

  
 Joanne Goldsmith  
 Executive Director

**PARTICIPATING ORGANIZATION:** American Association of School Administrators • American Civil Liberties Union • ACLU National Capital Area • ACLU of Connecticut • American Ethical Union • American Humanist Association • American Jewish Congress • Americans United for Separation of Church and State • Anti-Defamation League of B'nai B'rith • Baptist Joint Committee on Public Affairs • Board of Church and Society of the United Methodist Church • Central Conference of American Rabbis • Illinois PEARL • Minnesota Civil Liberties Union • Missouri Baptist Christian Life Commission • Missouri PEARL • New York PEARL • Monroe County, New York PEARL • Nassau-Suffolk PEARL • Michigan Council Against Parochialism • National Association of Catholic Laity • National Council of Jewish Women • National Education Association • National Women's Conference, American Ethical Union • Preserve Our Public Schools • Public Funds for Public Schools of New Jersey • New York State United Teachers • Ohio Free Schools Association • Union of American Hebrew Congregations • Unitarian Universalist Association

All contributions are tax exempt under IRS code Sec 501 c (3)

The New York Committee for Public Education and Religious Liberty represents over 50 civic, religious, educational, civil rights, parent and labor organizations in the United States with membership in the millions. A list of these organizations is attached to this statement. The American Jewish Congress and the American Jewish Committee are submitting testimony on their own behalf and therefore are not a party to this statement.

Our members believe strongly in the free public school system as a fundamental institution of our democracy and in the Constitutional guarantees of religious liberty and the separation of church and state. Governmental subsidies to private sectarian schools, whether in the form of direct grants or indirectly via tuition tax credits, vouchers, or any other form of public financing, violate these principles.

First, they are an unconstitutional assault on religious liberty, as our counsel Leo Pfeffer has testified before this Committee and as the United States Supreme Court has found in numerous challenges which have reached the high court.

Secondly, they represent a reversal of long-standing public policy and threaten our heritage of free public education.

Thirdly, they are divisive, pitting class against class, religion against religion and race against race.

Lastly, they are inflationary and would impose a grave economic strain on the nation's taxpayers. It has been estimated that the cost of the tuition tax credit legislation would be from four to

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six billion dollars in the loss of tax revenue from families presently paying tuition for their children's education. What those families would save in reduced taxes, the rest of the tax-paying citizenry would have to make up. In effect, the taxpayers who do not have children in private schools would be paying half the tuition of those who do.

While only 10 percent of American children attend non-public schools at the elementary and secondary level, 94 percent of these schools are religiously affiliated and controlled, only 6 percent are private, non-sectarian schools. In addition, government tax support for these institutions would represent a preferential form of assistance to some religious institutions and not to others, aiding only those denominations which maintain full day schools and not the hundreds of other religious groups which provide religious instruction after school hours or on Sunday.

Freedom to choose a religious education or private education for one's children is guaranteed under our form of government, but so is freedom from compulsory taxation to foster the religious beliefs of others or even of one's own church.

To suggest that a tax benefit to parents to compensate for tuition is not an aid to religious schools is specious. The Supreme Court has found no practical difference between a tax benefit and a tuition grant. "In both instances," it said, "the money involved represents a charge made upon the state for the purpose of religious education" - - equally unconstitutional.



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As to the public policy issues, it is the function of taxes to support governmentally provided services, such as free public schools, which are available to everyone without discrimination, whether the individual taxpayer personally avails himself of them or not. They are provided for the public good. No parent has a right to a share of public tax funds to subsidize a private choice just because he or she is not using available public services. Furthermore, it is an affront to the philosophy of public education to suggest, as has Senator Packwood, that if a public school were to start charging tuition, the public school parents would also qualify for the tuition tax credits.

The present administration has seen fit to propose cuts in Federal aid to education which would reduce the average expenditure per public school child to less than \$100.00 per year. The tuition tax credits would provide \$500.00 per child in a non-public school. This would certainly suggest that the Federal government considers private education which serves 10 percent of the population more important than public education which serves 90 percent. And the entire taxpaying population would be subsidizing the small percentage of families which least need such subsidies. An HEW study of private school data collected a little over a year ago revealed that despite reports to the contrary, private elementary and secondary school students remain predominantly northern, white and wealthy.

Moreover, by providing in the language of the proposed tuition

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tax credit bill that "Any educational institution which enrolls a student for whom a tax credit is claimed under this act shall not be considered a recipient of Federal assistance, the government would essentially be signalling that such schools would not have to comply with civil rights laws barring discrimination on the basis of race, national origin, sex, religion, or handicapping condition. It lends credence to expressed fears that the public schools would become dumping grounds for minorities, slow learners, handicapped children, behavior problems or any child not acceptable to a non-public school.

Tax credits traditionally have been given to provide an incentive for business, the incentive to invest in new equipment and increase productivity. Tuition tax credits would be a powerful incentive for a proliferation of private and religious schools. They would also serve as an incentive for parents to transfer their children and their allegiance from public school to private schools. How many people would turn down a government subsidy for a luxury obtainable at bargain prices? The fact is that private schooling is generally considered a luxury, like taking a taxi instead of riding public transportation. If this has a stampede effect on middle income families abandoning the public schools, it will lead to a severe splintering of our society and destroy our public schools. Their support would wither away.

It has been argued that those with money already have this option for private education and that tuition tax credits would give the same opportunity of choice to the poor. But those who have chosen

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private schools for their children, either because they want them in an elite environment, or a segregated environment, or fear their children's exposure to the different mores and values of other cultures, are not going to stand by and allow their protected environments to be invaded by minorities and poor people. The only real choice exercised in admission to private schools is that exercised by the school itself, not the applicant. Only in public schools are all children welcomed equally, without regard to religion, race, sex, family income, or academic ability. This is as it should be.

Nor is there evident any groundswell of public support for tuition tax credits or any other form of aid to non-public schools. The American people have shown their opposition to government aid to private and sectarian schools in public opinion polls and in referenda whenever they have been given the chance to vote on this question, as they have in a dozen states. When this issue was last debated in Congress in 1978, a Roper poll showed 64 percent of Americans opposed to tuition tax credits, only 28 percent in favor.

Another public policy issue is that of accountability. The public schools are accountable to the public for their educational policies and their fiscal policies. They are governed by school boards, either elected by the people or appointed by elected officials. Anyone can serve on a local school board, including parents of children in non-public schools. The private and parochial schools, on the other hand, are not accountable to the public. We do not elect their trustees. They do not hold open public meetings to set

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their policies. We cannot vote on their school budgets. The public is not represented. Forcing taxpayers to support them is taxation without representation.

Sponsors of tuition tax credit legislation respond that non-public schools save the taxpayers money. They claim that in cities with high percentages of enrollment in private and parochial schools, substantial financial relief for local taxpayers is realized because the private school attendance reduces the financial burben on the public schools. The fact is that in such cities not only has non-public school attendance exacerbated the segregation of public schools, but the public schools are starved of operating funds and in desperate financial straits - witness the public schools of Cleveland, Toledo, Chicago, Los Angeles, Philadelphia, Boston, and others. New York City's public schools were forced to close for ninety minutes a week for a whole year and they have cut back many services. The non-public schools in these cities enjoy not only their private funding but also benefit from state and Federal subsidies. Taxpayers have the power to vote down public school budgets, but not state and federal appropriations for private and parochial schools. Elite private schools never have a dearth of applicants willing to pay for their private privilege. Religious groups will do so without government help, as they always have. If not, the public schools would gain the additional political support necessary to generate the tax dollars for absorption of any increased enrollment. Their problem is their loss of enrollment and accompanying

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reductions in tax support. They would suffer even more if enactment of tuition tax credits at the Federal level encouraged similar action at the state and local levels.

It has also been argued that the public schools are a monopoly, squeezing out the private sector and inhibiting diversity and pluralism in education. Firstly, it is a myth that public schools represent an educational monopoly. There are over 100,000 public schools in this nation, independently controlled by 16,000 local lay boards of education and they are as diverse as the communities they serve. They share in common only one mandate from which private schools are exempt: they must operate within constitutional guidelines of nondiscrimination, academic freedom, due process, and the prohibition from engaging in religious or political indoctrination. They must accept all children and teach all children. They benefit our whole society. They serve as the central, democratizing institution in American life.

How much diversity and pluralism do you find in the non-public schools? How much diversity and pluralism can there be when the purpose of the schools' existence is to teach and protect one faith, or one race, one class, or one point of view? Which, by the way, we believe they have every right to do. But not at public expense. Meaningful diversity and pluralism are found in this nation's public schools, this is as it should be.

Another argument of tuition tax credit advocates is that the public schools need the competition posed by private education to force them to do a better job -- the constantly repeated charge that the public schools have failed, or that public schools teach

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a non-existent religion of secularism, or that they teach no values and are God-less places which breed juvenile delinquents. This is not the perception, however, of the millions who have been educated in our public schools or who send their children to public schools. Public opinion polls indicate that they are still highly regarded.

It is not competition that the public schools most sorely need. They need the moral and financial support that is eroded away when funds are diverted to other purposes. It is these systems which most need federal support to provide equal opportunity in education.

We noted earlier that tuition tax credits would have a divisive impact. They will encourage a more rapid proliferation of private and religious schools, splintering and polarizing our society. There are many hundreds of different religious denominations in this country and every church that wants to avail itself of public tax support will be able to set up some type of school in the basement or some corner of the church to make it eligible for this government subsidy.

The federal government will become more and more involved in determining which religious schools are entitled to be recipients of tuition tax credits and which will not. How much surveillance and entanglement will be required to assure against fraud, at what cost, and how much will be construed as violating the free exercise of religion? Church-state conflicts will mount.

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It is inevitable that as costs and enrollments increase, a policy of tax support would foster the growth of competing religious legislative lobbies, pressing their demands for increased funding and creating political divisiveness along religious lines. It would, in the words of James Madison, "destroy that moderation and harmony which the forbearance of our laws to intermeddle with religion has produced amongst its several sects."

Parents who feel they are suffering under the tuition burden have been misled on the notion that the tax credits will reduce the costs of college and private schooling. As Congresswoman Keys of Kansas pointed out in the House debate on tuition tax credits in 1978: "...we have already seen unexpected increases in tuition in higher education and postsecondary institutions at even the suggestion that this bill might be passed...Parochial schools have made it very clear that their intention would be to immediately increase their tuition if this legislation would become law." Parents will not see any relief, their benefits will be eaten up by the higher tuitions. As the tuition rises, so will the pressure to increase the tax credits.

The loss in tax revenues will be an uncontrollable cost that will increase each year. The initial cost of the Peckwood-Moynihan proposal has been estimated at \$4-6 billion for tax credits for tuition from elementary school through postsecondary schools. What ever it would be to start, though, there is general recognition that it will grow.

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How will the revenue loss be made up? Will we find taxpayers being doubly taxed, once for public schools and once for non-public schools? This is hardly in keeping with the President's proposals to cut federal spending and to balance the budget. This was not the message that voters gave last November.

To sum it up then, we believe that if this legislation passes, the cost would be enormous, religious liberty would become a fiction and public education would be slowly destroyed.

We urge you to oppose this legislation.



## APPENDIX - II

MEMBERS OF THE  
COMMITTEE FOR PUBLIC EDUCATION AND RELIGIOUS LIBERTY

American Ethical Union  
 Americans for Democratic Action  
 Americans for Public Schools  
 American Jewish Committee, New York Chapter  
 American Jewish Congress  
 A. Philip Randolph Institute  
 Association of Reform Rabbis of New York City and Vicinity  
 B'nai B'rith  
 Bronx Park Community  
 Citizens Union of the City of New York  
 City Club of New York  
 Community Church of New York  
 Community Service Society, Department of Public Affairs  
 Council of Churches of the City of New York  
 Episcopal Diocese of L.I., Department of Christian Social Relations  
 Humanist Society of Greater New York  
 Jewish Reconstructionist Foundation  
 Jewish War Veterans, New York Department  
 League for Industrial Democracy, New York City Chapter  
 National Council of Jewish Women  
 National Women's Conference of The American Ethical Union  
 New York Civil Liberties Union  
 New York Federation of Reform Synagogues  
 New York Jewish Labor Committee  
 New York Society for Ethical Culture  
 New York State Americans United for Separation of Church and State  
 New York State Council of Churches  
 State Congress of Parents and Teachers, New York City District  
 Union of American Hebrew Congregations, New York State Council  
 Unitarian-Universalist Ministers Association of Metropolitan New York  
 United Community Centers  
 United Federation of Teachers  
 United Parents Associations  
 United Synagogue of America, New York Metropolitan Region  
 Women's City Club of New York  
 Workmen's Circle, New York Division

Statement of  
Julius Berman  
on behalf of the

Union of Orthodox Jewish Congregations of America

before the

Subcommittee on Taxation and  
Debt management of  
the United States Senate  
Committee on Finance:  
Hearings on S. 550

Washington, D. C.  
June 4, 1981

The Union of Orthodox Jewish Congregations of America (UOJCA) is a lay organization which is the central coordinating body for more than 1,000 Orthodox Jewish Synagogues throughout the United States. This statement is submitted in support of S. 550.

The religious Jewish community across this nation views the current debate surrounding S. 550 with great alarm. It is not only that the discussion has been characterized by a disturbing insensitivity to the economic plight of parochial school parents who, because of the inflationary spiral, are forced to meet constantly rising fees - a rise which itself is fueled in no small measure by the government subsidy of virtually every sector of society save the private school sector. It is not only that their right to educate their children in a religious setting is seriously threatened as a result of the constantly increasing costs. And it is not only because in many instances, parochial school children, as a consequence of the escalating costs of educational materials, are not exposed to the latest research and developments in education. We are equally concerned that the denial of a tax credit for tuition costs of secular educational services at religious institutions, primarily because of the religious nature of companion educational services provided, is an alarming step along the road of

relegating religion to a permanent pariah-like status.

I hasten to add that I will not dwell on any constitutional issues, but rather focus on the social policy implication of refusing to provide credits because of a "religious connection." I would note in passing, however, that subsequent to the Nyquist decision, upon which opponents of S. 550 principally rely (413 U.S. 756 (1973)), the Supreme Court has stepped back from its wooden application of the now celebrated tri-partite test and approved direct reimbursement to parochial schools for certain educational services (PEARL v. Regan, 444 U.S. 646 (1980)) and recently a federal three-judge constitutional court upheld the provision, at public expense, of remedial educational services at parochial schools (PEARL v. Harris \_\_\_\_\_ F. Supp. \_\_\_\_\_). More pointedly, just last month a federal district court upheld a Minnesota private school tuition tax-deduction measure (Muller v. Allen, U.S.D.C. District of Minnesota, slip opinion, May 13, 1981, (C-3-80-395)).

The arguments arrayed against tuition tax credits are stated in various ways but can be reduced to three considerations. Will it result in a weakening of the public school system by providing a competitive alternative? Will it encourage parents to send their children to religious schools? Will it draw money away from public education to private education?

Indeed, what is wrong with competition that would promote better educational services to children? In point of fact tuition tax credits would not result in monies being drawn from funds earmarked for public education but from the general tax fund. Nor is it probable that the small amounts involved will draw students to parochial schools. But more to the point parochial education should be judged on its own merits, in terms of its value to society and whether it warrants a tax credit, much like the business investment and energy tax credits. Are we to denigrate the position of religious schools in our system of values? Are we to ignore the contribution religion has made to the uplifting of the human spirit, these many centuries?

We believe very strongly that as a general proposition and as a matter of public policy parochial school students are entitled to the same benefits and services public school students are. It is beside the point to argue that, yes, they are indeed so entitled but these benefits should only be available in the public schools. It is simply wrong that because the government has decided to go into the education business and directly sponsor schools, those schools are the only acceptable vehicle for the government to meet its responsibilities to all children. Are we really prepared in this country to adopt the principle that desirable public welfare measures are unavailable to otherwise qualified individuals only because they would

be administered under the auspices of a religious institution which those individuals may attend as a matter of religious conscience?

Opponents of tuition tax credits have attempted to portray such relief simply as a way of funneling money to religious institutions. Yet there are a whole host of public programs now being administered throughout the Nation which provide monies from the public treasury to individuals and business enterprises. Yet, none would suggest that a business concern that is the recipient of an investment credit or an individual who receives an energy credit or social security payments, or indeed welfare payments, is in any way restricted in what can be contributed to religious institutions.

Moreover, while government may not be required to provide tax relief to those who draw less than the average citizen on state services surely a state may, in reason, do so as a matter of equity. (See e.g., Cooley, *The Law of Taxation* (4th ed.), s 89, p. 213). Are we prepared to say that this is impermissible only because of an underlying expenditure made to a religious school?

In sum, the issue we would wish the committee to ponder hard is that opponents of tuition tax credits and opponents of parochial aid in general are attempting to change the rules of the game only because of the

"religious connection." We view this as a pernicious and alarming approach to public policy. We urge passage of S. 550, not only because of its substantive fairness, but also because it would represent a resounding cry of halt to a dangerous drift in this Nation which we would do well to check.

Thank you very much.



NATIONAL COUNCIL OF JEWISH WOMEN  
 15 EAST 26th STREET · NEW YORK, N.Y. 10010  
 TELEPHONE: (212) 532-1740

SHIRLEY I. LEVITON  
 NATIONAL PRESIDENT

DADIE PERLOV  
 EXECUTIVE DIRECTOR

June 8, 1981

STATEMENT OF THE NATIONAL COUNCIL OF JEWISH WOMEN  
 TO THE  
SENATE FINANCE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT  
OF THE FINANCE COMMITTEE

The National Council of Jewish Women, an organization founded in 1893, has a membership of 100,000 women located in more than 180 communities across this land. NCJW functions through an integrated program of education, service and social action, locally, nationally and internationally.

The National Council of Jewish Women has always been a staunch supporter of public elementary and secondary education, and that traditional position was reaffirmed as recently as March 1981, when the more than 700 delegates at our biennial convention adopted the following resolution:

"The National Council of Jewish Women believes that a strong system of public education is the best vehicle for maintaining American democracy. Equal access to quality education is a fundamental right for all individuals. We therefore resolve  
 . to protect and uphold the constitutional principle of separation of church and state which is basic to our system of public education (and)



. to ensure that public funds are used only for public education."

There are at least four aspects of Senate Bill 550 which are of grave concern to the National Council of Jewish Women.

First, there is the basic question of equity. This legislation would provide a tax credit to an individual of "an amount equal to fifty percent of the educational expenses paid by him during the taxable year to one or more educational institutions for himself, his spouse, or any of his dependents." Such amount may not exceed \$500 (from July 30, 1982 until August 1, 1983) or \$1,000 (after July 31, 1983).

Who will benefit from this tax windfall? According to a recent U.S. Department of Education study (Tuition Tax Credits for Elementary and Education; Some New Evidence on Who Would Benefit), families making more than \$25,000 a year are five times as likely to send their children to private schools as are families with an income of \$5,000. This legislation would do nothing to redress that imbalance, so there is no doubt that upper income families will benefit greatly from this legislation while lower income families will benefit very little. Further, because 90% of private school students are white, this bill will foster and reinforce another kind of inequity, since white families will benefit disproportionately by comparison with minority families. The result could well be a dual school system wherein the "haves" will attend private schools and the "have nots" attend public schools.

Secondly, the proposed legislation will result in a federal revenue loss of at least four billions of dollars per year, with a potential for far greater losses in subsequent years. At a time when draconian measures have been taken to cut human services programs, including education

programs, the enactment of this legislation would not only increase the budget deficit, but would further fuel the inflation which hurts all citizens, but particularly the old and poor.

Thirdly, this bill, if enacted, would further undermine financial support for the public schools at a time when other financial sources are diminishing and public education is under attack. As an organization we are committed to the principle that quality public education be available to all children. While we support the right of parents to send their children to private schools if they so choose, we oppose any proposal which would divert public funds from public schools to private schools. Should this bill become law we can expect to see an exodus by children of upper income families from public to private schools, thus creating a class system of education. Public schools are mandated to accept all children - the handicapped, those with learning disabilities, the poor, the minorities, the unruly -- ALL children, and that is as it should be. But private schools are under NO such compulsion. Congress should not foster a dual school system based on class: one for the so-called elite and one for the disadvantaged!

Finally, this bill violates the Constitutional principle of separation of church and state. The vast majority of non-public school students attend church-related schools, and tax credits to the families of these students will, in effect, result in federal subsidies to church-related schools. The courts have rules on this point and the judicial record is clear. The 1973 Supreme Court decision invalidating the New York state tuition tax credit law as a violation of the Establishment clause of the First Amendment indicates that this proposed legislation is clearly unconstitutional. (National Coalition for Public

Education and Religious Liberty V. Nyquist, 413, U.S. 657). Separation of church and state is a bedrock principle in our Constitution, and we must resist all efforts to weaken or modify it. This proposed legislation will do so, and we therefore urge that it be rejected.

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JUN 23 1981



United Parents Associations  
of New York City, Inc.

88 Madison Avenue, New York, N.Y. 10018 688-3883

50th Anniversary

TESTIMONY SUBMITTED BY THE UNITED PARENTS ASSOCIATIONS OF N.Y.C.  
IN OPPOSITION TO SENATE BILL 550 (TUITION TAX CREDITS) FOR  
HEARINGS HELD BY SENATE COMMITTEE ON FINANCE, JUNE 3 & 4, 1981

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United Parents Associations, the 60-year old organization representing more than 400,000 New York City parents and their children, wishes to record its vigorous opposition to tuition tax credit legislation.

The UPA opposition to tuition tax credits -- a consistent position over the years -- has gathered strength during this year at the insistence of our constituents, parents from every school district in this city.

As a member organization of New York City Citizens Against Tuition Tax Credits, we joined with others on June 8 in delivering to Senators Moynihan and D'Amato more than 100,000 "school-grams," letters and petitions, many signed and gathered by city public school parents. More are to come. Our intelligence indicates that opposition is becoming both more widespread and more militant as the stakes involved become more apparent.

Our position reflects our belief that enactment of tuition tax credits would affect adversely the following areas of American life: (1) Continued adherence to democratic purposes and ideals; (2) Constitutional principle of separation of church and state; (3) Concept of "no taxation without represen-

(more)

Voice of N.Y.C. Public School Parents Since 1921

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tation"; (4) Maintenance of free, equal and appropriate public education.

(1) Democratic Purposes and Ideals. Universal free education for its children has been an historic American purpose, probably unequalled elsewhere at any time in history. Remarkably, this intent, in broad strokes, has been enacted and an ever-increasing number of children have been afforded an ever-increasing number of years of schooling.

This has been accomplished in an environment of diversity that inevitably results from the governance of more than 16,000 local school boards and with a population that is pluralistic by any descriptor. Public support for public education always has presupposed optimism for the future of children and therefore, for the nation. Out of diversity and pluralism has arisen a great network of commonality for the nation, carried by its citizens educated in the public schools.

If tuition tax credits were to be enacted, a clear national commitment to public education would be diminished by some of the specific actions detailed below, but more importantly, because the message to ourselves and to the world would be that an historic mission was failed. On what grounds can the Congress abandon its efforts to strengthen public education and believe that its duty instead is to private education? The thousands of New York City parents working to improve the public schools and the larger numbers of U.S. citizens who have rejected tuition tax credits in state referenda and polls, believe that the public duty is to public schools.

(2) Separation of Church and State. Since at least 1640 in New York State, proposals that would benefit religiously-affiliated schools have been defeated. Eighty-nine per cent of American children go to

(more)

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public schools. Of the private schools attended by the remaining 11%, 85% are church-related. Court decisions consistently have declared unconstitutional aid to schools advancing religion. In a 1978 Roper poll, 48% of Catholics (comprising 75% of private school students) opposed tuition tax credits. As is the question with all private schools, will religiously-affiliated schools welcome the intervention of government in their affairs?

It is more likely that there would be enormous pressure to maintain separation of church and state, led by those very institutions that would most benefit from tuition tax credits. Either we have the spectre of the government intimately enmeshed in church affairs and urging parochial schools away from their very purposes or a violation of separation of church and state with the public paying for the advancement of religion.

(3) "No Taxation Without Representation" It is calculated that tuition tax credits would reduce Federal revenues initially by more than \$4 billion annually, predictably escalating to \$7 billion in short order as credits are increased. With the ceiling unknown, this becomes an inflationary item in an administration pledged to restoring financial stability.

The present Federal allotment of \$50-\$70 per private school student is to accomplish those special purposes that advance established national educational priorities as determined by the legislative process (e.g., amelioration of educational disadvantage, provision of free lunch for those that qualify, etc.). The Federal government has not provided general institutional aid to either private or public schools, as the charge for providing education rests with the states. (It is a thin argument made by proponents of tuition tax credits that aid to parents, rather than to schools, is involved.) By removing an  
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educational expenditure from the normal legislative process (and that is what would occur if tuition tax credits were to proceed) the taxpayers' interests would nowhere be represented.

With Federal funding normally comes the assumption of Federal responsibility for oversight -- of expenditures, setting of qualifying policies for curriculum, admissions and hiring, prevention of fraud, etc. The participation of the citizenry in such oversight occurs at the local level through election of school boards and input in governance and at the national level through its elected officials. None of these structures that customarily ensure that expenditure of tax dollars represents the will of the American people are in place regarding the private schools. If we are to be consistent with our Constitution and the principles established at the Boston Tea Party, provision would have to be made for public say in the operation of private schools. It is not likely that private and parochial schools would welcome the regulations implicit.

Some of the rhetoric surrounding support for tuition tax credits extols the added educational options that private education offers to parents. If this is so in some limited cases of positive options, it is the very exemption from mandates and regulations that has enabled private schools to experiment and organize for special purposes and, in isolated instances, to nurture advances that have trailblazed for public education. Either private and parochial schools will lose their autonomous status or the legislature will turn aside from the Constitution and use public funds blindly, without judgment as to their use.

(4) Free, Equal and Appropriate Education. By offering a positive financial incentive for withdrawal of students from public schools, tuition tax credits would jeopardize the existence of public education. The amount of tax credit would be relatively small in relation to most

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private school tuitions which in similar experiences with medical fees could be expected to escalate by the amounts credited to parents. They would be of greatest benefit to those already capable of paying tuition and with enough financial play to value a retroactive benefit. This very group, however, would be potentially a powerful lobby for increased support for the private sector at Federal, state and local levels and at the expense of public funding.

What a curious precedent to set! Pay only for direct personal services as if all of society did not benefit from those areas that are commonly financed. Should we relieve individuals of contributing to the support of public parks if they never go to the park and, instead, give them financial incentives for growing a piece of personal greenery?

The 1970's have been described as the era in which the United States came to grips with the concept of limited resources. The percentage share of dollars to fund public education, already inadequately financed if we are to achieve the purpose of appropriate education for every child, has declined and in this fiscal year, there is an anticipated 25% cut in Federal aid. Support to private schools would be a deduction from funds available to public and would be viewed as part of the Federal government's "education package." It is our contention that as support in every form is withdrawn from the public schools, services will inevitably decrease further causing even more students to leave the public schools if they have any viable alternatives.

Every parent with any school experience is familiar with the imbalances created when a class is "creamed" in order to organize a special situation. Even with whatever legislative restrictions that can be imposed in the tuition tax credit legislation, the result will

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have to be the "creaming" of the more easily educable from the public school system. Private and parochial schools can admit and retain students of their choice. It is inconceivable, as well as historically predictable, that they will not choose to serve significant numbers of "expensive" students with special needs: the handicapped, bilingual, the poor, those with learning patterns most difficult to approach. Although a backlog of need exists, parochial schools currently educate only 2.7% of all handicapped children in the United States.

In an environment that devalues the public schools, rather than emphasizing their improvement, parents are very pressed to seek alternatives for their children. They will not necessarily have access to well-established private schools. There is great concern that parents and students will be victimized by fly-by-night, narrowly conceived and operated schools that are not required to educate even within minimal standards. There is a strong probability, also, that schools will be sustained with anti-social purposes such as those that emerged during the civil rights movement.

If tuition tax credits are legislated, for the first time the United States government will reverse education budget priorities by outpacing the present \$140 per capita expenditure for public school students by a \$250-500 expenditure for each private school student. There will be a further reduction of the historic mix of students in the American classroom in which our diverse country has attempted to socialize its citizens to live side by side. It will be increasingly difficult to successfully maintain or increase the confidence in public education if the public schools have a disproportionate share of the costly-to-educate and difficult-to-educate students.

Tuition tax credits risk promoting a United States school system separated by class, educational need, ethnicity, religion and special purpose. UPA urges defeat of any and all tuition tax credit bills!

2627 Mitzi Drive  
Columbus, OH 43209  
May 19, 1981

Robert E. Lighthizer  
Chief Counsel  
Committee on Finance  
Room 2227  
Dirksen Senate Office Bldg.  
Washington, DC 20510

Gentlemen:

This letter is a written statement for the record for the Senate Finance Subcommittee on Taxation and Debt Management's hearing on S.550, which would provide a tax credit for educational expenses of elementary, secondary, vocational, and college education.

I am opposed to S.550.

There are several grounds for my opposition. First, I am opposed to any plan which would have the effect of undermining the public school system in the United States, and S.550 would have that effect. Each parent in this country has an absolute constitutional right to have their children educated in the private school of their choice, should they choose to have their children not attend public schools. But that is a purely private decision.

Having made that private decision, those parents should neither expect nor demand assistance from the public sector. Such assistance does nothing more than encourage more parents to remove their children from the public school system and will serve to undermine the public school systems of large cities which are in serious financial difficulty today. Since many parents are removing their children from public school systems which are under desegregation orders, there are serious negative racial overtones to any legislative proposal which would reward white flight from the school systems.

Also, as this bill would provide a direct subsidy to parents who have enrolled their children in parochial schools, I do not believe that the bill will pass muster regarding the separation of church and state. I make no claims to be a constitutional scholar, but I do not think that a scheme to pay parents to send their children to parochial schools is acceptable under the First Amendment to the Constitution.

Finally, I question whether this country can afford the cost of the program given the current budget cutting which is going on. A tax

credit is, after all, strictly a spending program clothed as a tax break. And it appears to me to be contrary to President Reagan's promise to stop using the tax system for social objectives.

Therefore, I urge the Senate Finance Subcommittee on Taxation and Debt Management to reject S.550. Give us the overall tax cut we need to make The President's economic program work, and if some taxpayer's choose to spend after-tax dollars on private education rather than to save those dollars, so be it.

Very truly yours,

A handwritten signature in black ink, appearing to read "Terry M. Covei". The signature is stylized with a large, sweeping initial "T" and a cursive "Covei".

Terry M. Covei

ADVOCATES FOR CHILDREN

of New York, Inc.  
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Miriam Thompson  
Executive Director

Congressional Hearings on

Senate Bill 550

-Tuition Tax Credits-

June 3 and 4, 1981

Testimony by Miriam Thompson  
Executive Director,  
Advocates for Children of New York, Inc.

Dedicated to the protection of every young person's right to an education

Advocates for Children is an eleven year old children's rights project in New York City which is deeply concerned with protecting the educational rights of New York City children, particularly children who suffer from adjustment problems, language barriers, handicapping conditions, sex and race discrimination. The organization seeks to secure education and youth service entitlements for these children, most of whom are enrolled in New York City public schools. Senate Bill 550 providing tuition tax credits at the elementary and secondary level threatens the rights of the children we have worked so long and hard to protect. We urge the Senate to defeat this bill.

The Packwood-Moynihan tuition tax credit proposal benefits the higher income parents of private and parochial school children by allowing them a tax credit of up to \$500.00 for each child enrolled in private school. This benefit will be at the expense of lower income children whose parents cannot afford private school tuition and depend on public education as the ticket to a better future. Tax credits will encourage the development of an educational caste system in which higher income students are segregated from those less economically fortunate.

In our experience, private schools are selective in choosing their enrollment. The private schools generally accept advantaged children who have no learning problems. Children with educational deficits, handicapping conditions or discipline problems are refused admission, or expelled if learning difficulties develop. Furthermore, many educationally needy children come from poor or over whelmed families who lack the know how to seek out private school placements.

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Public schools educate all children whether they are handicapped, exceptionally bright, rich or poor. In addition the public school system educates children of every race, creed, and religion in the United States. Presently, the Federal government provides a subsidy of \$128.00 for the average public school student and even private school children benefit from Federal assistance as a result of library resources, guidance and testing programs at an average cost of \$40.00 per pupil. Incredibly, the Moynihan-Packwood proposal to provide up to \$500.00 for each private school student is more than four times the aid currently given to public school children.

Children who attend public school, particularly the poor, handicapped, non-English speaking or maladjusted, often need special services and attention and cannot afford alternative means of education. However, these will be the very children deprived of an adequate education under the tuition tax credit proposal. To add insult to injury, public school parents will pay higher taxes to cover the loss of tax dollars resulting from the tax credit.

Private schools benefit only 3% of American families and 10% or 5 million of its students. Congressional analysis estimates 20% of the benefits from tuition tax credits would accrue to the most affluent 10% of the population. In contrast, over 42 million students are enrolled in public schools. Federal assistance should be targeted to help the handicapped, the language deficient and the poor. Yet, only about 2.7% of all religious schools provide programs for the handicapped and private school enrollment is highest among northern, white, wealthy families. Thus, tuition tax credits primarily benefit the rich and the few at the expense of the poor and many.

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The tax credit will benefit private schools more than individuals since the tax saving resulting from the credit is likely to be eaten up by increases in private school tuition. Furthermore, while the credit for college tuition would not significantly offset rising costs for lower and middle income students, it would distribute hundreds of millions of dollars to upper income families who are readily equipped to pay for their children's education. Low income, minority public school parents will still be unable to afford private school tuition since the tax benefit is not received until a year after tuition must be paid. Most lower income families cannot manage without this money for such length of time.

Most disturbing is the fact that tuition tax credits will result in a loss of tax revenues of at least 4.7 billion dollars. These tax credits would thus limit future federal funding available for public schools and limit the capacity to provide educational resources to target populations. Furthermore, even if a parent could afford the full tuition necessary to send a handicapped or educationally deficient child to private school he or she will most likely not be accepted since non-public schools have no responsibility to accept.

In the past eleven years, Advocates for Children has been dedicated to providing improved services to children neglected by traditional schooling. Our efforts have focused on achieving quality education for working class and poor children. The tax credit proposal would exacerbate the problems of the children we work for. It would drain educational benefits from children who have no alternative but

the public school. The money so desperately needed by public schools to educate poor and handicapped children will almost exclusively be used to encourage and educate children who have no learning difficulties and whose parents are more than able to educate them anyway. The credit is designed to provide greater benefits to upper class families which already benefit from tax shelters and other loopholes, than to the poor and middle class. Families with incomes under \$15,000 are likely to receive as little as 15% of the benefit whereas those with incomes over \$25,000 will receive up to 55%.

Furthermore this proposal violates a basic constitutional principle - the separation of church and state. Since most private schools are religiously affiliated, religious schools or parishes would be a significant beneficiary of tax credits. Tax credits will thus advance religion at the public's expense. Such a result is contrary to basic tenets of our form of government.

The opposition to tuition tax credits in no way reflects opposition to religious or private instruction. Further we believe that at the higher education level the present loan and grant system is fair and efficient. However, tax credits at the elementary and secondary level would benefit and would undermine public education. In addition, the position taken by Advocates for Children is not a minority one. According to a 1978 Ropes poll, 64% of Americans also oppose tuition tax credits. Even 48% of the Catholics, who constitute three fourths of the private schools population, were found to be opposed to the tuition tax credit scheme.



Advocates for Children as an organization dedicated to the protection of every young person's right to an education stands opposed to the proposed tuition tax credits and encourages the proponents of this plan to re-evaluate their objectives in order to provide meaningful programs which strengthen education for all children.

STATEMENT FOR INCLUSION IN PRINTED RECORD OF

SENATE FINANCE COMMITTEE HEARINGS

JUNE 3 & 4, 1981

ON S.550

TUITION TAX CREDITS

Submitted by: Sr. Marie Chaminade, O.P.  
Resource Person COCEA  
Assistant Superintendent of Education  
Diocese of Rockville Centre  
50 North Park Avenue  
Rockville Centre, N.Y. 11570

The controversial nature of tuition tax credits has made the parents of our American educational system, public and nonpublic, more and more knowledgeable about the ramifications of the issue and about the justice that is involved.

We, of the nonpublic sector, are proud to be Americans and we support enthusiastically the American educational system. We concern ourselves greatly with the reports of the demise of the public educational system (Newsweek - "Why the Public Schools Fail", April 20, 1981, pp. 62-65). We in no way want for the further deterioration of the American system. We see the pluralistic system as healthy competition. American citizens should be able to view each segment of the pluralistic system of American education with pride and choose freely which schools answer their needs.

Perhaps it would be worthwhile to consider what might happen if healthy competition is not forthcoming. What is to stop the trend in the public school system? Will public school teachers become more dedicated? Will children who graduate from the public school system be more value-oriented than in the past? Will they be more highly educated or will they be educated as well? Who is to say. One answer is some good healthy competition.

It is true that American philosophy has a competitive facet to it. Public school systems certainly have offered the nonpublic schools a challenge at some times in history more than at other times. Right now there is a need for the opposite. Albert Shanker has recognized the need for each to challenge the other. We sincerely do need each other in the American educational system. With rising costs the nonpublic schools will not be able to sustain a high degree of competition without financial help.

Taxation has always been a question in the development of our country. Whether it is taxation with representation or fair taxation. When we view the world situation and the countries who do not share their taxes with nonpublic educational sector, if they study moral and religious values, we find the United States is among the following:

Albania	Hungary
Bulgaria	Republic of So. Africa
China	Russia
Ceylon	Turkey
Cuba	UNITED STATES
East Germany	Yugoslavia *

(\* Blum, S.J., Virgil C. Catholic Education: Survival or Demise, p. 103)

International history further points out that in the countries where children can study religious and moral values in nonpublic schools without loss of tax funds for their education ..., the public schools have not suffered. \*\*

(\*\* McGarry, Prof. Daniel D. International Panorama: World Survey of Aid to Independent Education)

As very patriotic American citizens this disturbs us. Does it disturb you?

Let us work together to make the educational system in the United States possible for all so that we may each say with pride, "I am an American and the educational system of my country is one of which I can be very proud." Every child, regardless of race, creed, color or sex is able to be educated in such a way that the total American populace looks with pride on their youth who have been "pluralistically" educated in a pluralistic society. It is good to be educated in the American pluralistic educational system. It is excellent for a

- public school graduate to look upon the non-public school graduate/or
- the nonpublic school graduate to look upon the public school graduate

and to say, "Because of our different educational perspectives, together we can build a better America."

Let's work to preserve the existence of Public and Nonpublic education in our American system. Support Tuition Tax Credits.

Testimony of  
 Robert P. Dugan, Jr.  
 Director, Office of Public Affairs  
 National Association of Evangelicals  
 on  
 S.550, Tuition Tax Relief Act of 1981  
 to the  
 Subcommittee on Taxation and Debt Management  
 of the Committee on Finance

Predicting is a hazardous business. Nevertheless, I predict that most evangelical leaders will change their minds within the next year or two on the subject of tuition tax credits or vouchers, by which the federal government will give relief to families sending their children to private schools and colleges.

In my opinion, evangelicals will be well-advised to switch from opposing to favoring such legislation. I have.

Let me immediately enter a disclaimer. This column contains my personal thinking, and does not necessarily represent that of the National Association of Evangelicals. In years past, as a matter of fact, I would have exhibited a negative knee-jerk reaction to this kind of legislation, assuming it to be a clever Roman Catholic ploy to secure parochial aid. No more.

The burgeoning Christian school movement is teaching us a great deal. Growing numbers of families want to educate their children with biblical values, instead of the often amoral, secular non-values of the public school system. They are willing to pay tuition to provide a more disciplined setting, where education in basic skills is the primary goal, rather than social objectives. Non-religious private schools are increasing as well, for similar reasons.

Flowing out of the political shift of the 1980 elections, there is a new mood concerning education. President Reagan and the Republican Party platform favor a system of family choice in education, endorsing tax relief for parents who choose to place their children in private schools and colleges. The new political majority in the Senate and the new philosophical majority in the House may well go along.

Such a thrust is not totally new in 1981. In 1978, tuition tax credit legislation failed only when two conference reports were incapable of reconciling differences between House and Senate versions. In 1979-80, tax credit legislation championed by Senators Moynihan (D-NY) and Packwood (R-OR) produced a great deal of interest, although it did not become law. One member of the Reagan transition team echoed the sentiment of many when he said: "I think that the election is probably a mandate for tui-

tion tax credits."

Molders of public thinking are changing their minds. Columnist Joseph Sobran confessed that he used to oppose government aid to private education in any form. Now he recognizes that "People don't use private schools out of ingratitude but out of love. They make sacrifices to give their children the best education they can. They deserve at least some consideration for that." Sobran notes that parents want their children taught in the atmosphere of moral and religious values that are excluded from public schools, while modern liberalism "implicitly regards education as a process of 'liberating' the young from the presumably backward values of the home."

Sobran then points up a contradiction. "Usually, liberals argue that a right worth having is a right worth subsidizing. We are told that poor women do not really have a right to an abortion unless they have 'access' -- in the form of tax monies -- to abortion. We are also assured that subsidizing abortion in no way implies approval of it. Why isn't this logic applied to private education?"

The Editor of Christianity Today last November acknowledged "a radical 180 degree reversal in his thinking." Arguing for the survival of Christian colleges, he contended that the government should assist qualified students in the cost of their education in any qualified institutions where they choose to study. His arguments are cogent, and I believe that the same logic, carefully applied, will ultimately lead Christianity Today to support similar aid to families who wish to educate their elementary and secondary school children in private schools.

Let me back up a minute to define terms. Tuition tax credits would allow parents to reduce their tax payments up to a certain percentage of the tuition they paid to put their children in private schools. In proposed 1980 legislation, that would have meant a maximum of \$250 per student. Under a voucher system, the government would provide a voucher for a designated sum of money, to be used to pay the cost of schooling a child at any public, private, or religious school, provided it met certain educational qualifications. Whether for the full or lesser amount, vouchers would broaden the freedom of parents to choose.

Support for tax credits and voucher-systems is not confined to Christian leaders. An article on tuition tax credits in the January, 1979 edition of the Harvard Law Review concludes this way: "In face of the significant burden on individual and religious choice in the educational area, a national tuition tax credit plan should be held a permissible way to balance separation and neutrality values so as to promote the overall goal of religious liberty."

Three major benefits would flow from such legislation. They involve freedom of choice, enhancement of pluralism, and excellence via competition.

Parents would have a genuine right of choice. Theoretically we do now, for those who feel that public schools are not compatible with their own moral, intellectual and religious outlook are allowed to provide private schooling for their children. But they cannot do it without penalty. They must pay twice for education, financing unused public schools through taxes and the private education through tuition. As inflation increases, less and less families really have a choice. Tuition tax credits or vouchers would help families during these terribly difficult years before they attain peak earnings, but while their educational expenses are maximal.

The monopoly of thoroughly secular tax-supported public education would be broken. Christianity Today persuasively argues that "public institutions are not more neutral to religion than are evangelical colleges." To many of us, governmental support of public schools amounts to the "establishment" of non-religion or secular humanism, as the official religion of the United States. Billions of dollars are in effect being used to promote antagonism to religious values. When government sees the light and helps families to educate their children as they wish, private schools will be allowed to flourish and the pluralism in education that once marked our society will in a large measure be recovered.

Schools and colleges will improve greatly through competition. A free-market educational system will develop, with parents and children as consumers while teachers and school administrators are producers. In competing for the consumers, public schools and higher educational institutions will be forced to excellence in order to survive, as will the private institutions. And centralized bureaucracy will lose its clout.

Senator William V. Roth (R-DE) an initiator of tuition tax credits, says that there are three distinctive classes of people where education is concerned: the very rich, the very poor, and the very taxed. The very rich, of course, have no problem in education. The very poor generally can get governmental help for higher education, but are trapped in inferior elementary and secondary schools in the ghettos. The very taxed, the middle class, are frequently precluded from choice at both levels. I found myself in that situation some years ago, when I was earning too much to gain financial help for my son, but not really enough to be able to afford a Christian college.

Now let me anticipate the three major objections that will be hurled at this approach to education, briefly responding to them.

The public educational system will be severely damaged. The National Education Association and the American Federation of Teachers have waged a strong propaganda campaign on this issue for years. It is alleged that there would be a mass exodus from the public schools and that they would be ruined if government

more nearly equalized the cost of placing one's children in private schools. On the other hand, to be frank, when I was running for Congress in 1976 an NEA County Committee revealed that its all-encompassing concern was teacher-advocacy, not the well-being of students.

It seems to me that diversity is the best guarantee of quality. Let me offer a ridiculous illustration. Suppose a certain automobile dealer is giving cars away free this weekend. In spite of that, you choose to pay \$9,000 for a different make of car. I would assume that you believed the free automobile to be of incredibly lousy quality, to use an unvarnished word. By the same token, families who pass up the "free" public education, for which all of us must pay through taxes, in order to pay for private education, must have a reason.

If public schools are producing as splendidly as professional educators contend, then they need not fear competition. Actually, the decline in the quality of public education is the source of widespread disgruntlement. At primary and secondary levels the poor are thus hurt the most, because their children will never have an adequate preparation for competition in the business and professional world, in order to escape poverty. I have an article before me in which blacks plead for tuition tax credits for inner-city parents. It may surprise you to know that the Congress Of Racial Equality has made support of a voucher system a major plank in its agenda.

Taxpayers would be forced to pay for two educational systems, both public and private. It is not difficult to respond to this objection. Even if it were so, the value of freedom for families is of over-riding importance. Discrimination against parents wishing to send their children to private schools and colleges must be broken.

Actually, the allegation is not true. Removal of numbers of public school students from those systems decreases the cost of those schools. Further, the record of private institutions is that they educate children at a lower per capita cost than do public institutions.

Tuition tax credits or vouchers will breach the wall of separation between church and state and would be ruled unconstitutional. Many constitutional experts do not see it that way at all. Tax credits would simply be a matter of allowing families to retain money they have earned, to keep it for the education of their children instead of turning it over to the government. Aid is then given to families and not to the schools, so that religion per se is not being advanced by the credits or vouchers.

It is too soon for us to conclude that such an approach to education would be ruled unconstitutional. The old GI bill provides a beautiful illustration. Veterans were given grants by the government, according to their military service, and those veterans in turn were allowed the freedom to spend their



benefits in colleges of their choice, including evangelical Christian colleges. No one to my knowledge ever argued that this practice was a violation of the First Amendment of the Constitution. Beyond that, columnist George Will argued that it is inconsistent to proscribe tax credits for tuition to religious schools while permitting deductions for contributions to churches.

On the pragmatic level, the Supreme Court will feel the impact of appointments by President Reagan. Given one or two new appointments, the Court may swing ideologically in such a way that it will define separation of church and state more clearly, re-affirming the pluralism in education which historically existed as a matter of the free exercise of religion.

I plead for openness and hard thinking in this area. Families are in anguish as the public educational system, with governmental support, so often undermines godly values taught at home. The majority of our evangelical families simply can't afford private education at any level. This situation cannot be allowed to remain.

Tuition tax credits or a voucher system for education would go a long way toward resolving the problem, but neither will become law without the support of the American people. Evangelicals, I assert, should lead the way in molding public opinion.

STATEMENT OF

SR. JOAN STAUDOHAR, OP  
PRESIDENT

AND

BRO. GARY B. ECK, SM  
PRESIDENT-ELECT

ON BEHALF OF THE

CATHOLIC SCHOOL ADMINISTRATORS OF NEW YORK STATE

BEFORE THE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

OF THE

SENATE COMMITTEE ON FINANCE

UNITED STATES SENATE

ON

TUITION TAX CREDITS

WASHINGTON, D. C.

JUNE 4, 1981

Mr. Chairman, Members of the Committee, we are Sister Joan Staudohar, OP, and Brother Gary Eck, SM., President and President-Elect of the Catholic School Administrators Association of New York State. We are also principals of an elementary and a high school, respectively, although we do not address you primarily in that capacity. We do come as the representatives of more than seven hundred administrators of Catholic schools across New York state in order to address the topic of tuition tax credits.

We are most aware that the Committee has received expert testimony from many witnesses on the topic of tuition tax credits. We do not intend to simply repeat the many facts and views which have been so well brought to your attention by others. We know that any number of studies and reports have been brought to your attention, for example, the masterful report of Professor Coleman<sup>1</sup> and the survey by the Catholic League<sup>2</sup>. We do, however, wish to speak as administrators of schools and to share with you the experiences of dealing with parents who have exercised their right to freely direct the education of their children.

Time and time again, as we, teachers and principals, deal with parents and children -- and after all, that is what this whole concern is about, helping children -- the parents will express very strong wishes concerning the type of education they want for their child. Almost invariably, this is immediately followed by a statement of the sacrifices which the family is making or willing to make for the sake of a good education.

A concrete manifestation of this dedication of the parents is the phenomenon that a most frequent clerical change in family information in student files is the mother's business address. More

and more, mothers are taking jobs or expanding part-time jobs into full-time jobs in order to pay for tuition for their children's education.

To be honest, the particular schools of which we are principals are in the suburbs of New York City; most of our particular families will be grouped in the "middle class" economically. Our many colleagues in the Catholic School Administrators Association who conduct schools in the inner city or in other areas where the families are predominantly "lower class" tell us that this phenomenon of both parents working -- sometimes two jobs each -- is even more pronounced in their schools. In short, parents are looking for tuition tax credits to relieve some of the burdens they are shouldering to educate their children as they see fit.

There is another aspect of tuition tax credits which we as educators would like to present to the Committee. Tuition tax credits for elementary and secondary students would generally benefit families which are younger and still struggling for security. I am sure that you are most familiar -- probably beleaguered is the better word -- with the problem experienced by couples who have been married for but a few years, as they attempt to deal with inflation, high interest rates, lack of mortgage money, the education of their children, and taxes. We would want to remind you that these younger families who have not yet achieved an economic stability will be very much aided by the passage of tuition tax credits.

Members of the Committee, so far in our statement, we have addressed ourselves mainly to the benefits which tuition tax credits would provide to families; we have sought to describe these benefits in the ways in which we have experienced them ourselves. The

tuition tax credits proposal of Senators Packwood and Moynihan, S.550, masterfully and properly places the entire benefit of such tax credits directly upon the families of the children in private schools.

Turning away the parents and families who would be the real beneficiaries of the relief provided by tuition tax credits, we would like to briefly treat the effect that such credits would have on the schools.

Happily, we can say that there will be no direct effect on the schools. Sadly, our general experience with governmental intervention in schools, and in private schools in particular, is negative. Almost invariably, governmental intervention has resulted in bureaucracy, paper work, forms and deadlines which only hinder the process of teaching children. Sometimes as administrators we find that it is necessary to almost shield classroom teachers from the mountains of governmental intervention that are imposed. Lest we be too cynical, we must acknowledge that many governmental programs have indeed significantly aided education in individual classrooms; usually these programs have been successful because the original legislation was so well written that the desired effect was able to be achieved almost despite the inevitable governmental busy-work that enshrouds the basic thrust. Two such programs, Title I and Title IV-C, come to mind immediately in this regard. These have been relatively successful despite the degree of governmental intervention which they brought. We applaud S.550 for avoiding all unnecessary government intervention in schools.

Some critics of tuition tax credits have pointed to various "segregationists academies" as reasons justifying the blockage of

tuition tax credits. As educators, we are embarrassed by and deplore operations which pose as being educational but which in reality seek to circumvent the rights and freedom of opportunities of people. Frankly, we marvel at the utter simplicity and effectiveness of the wording of S.550 in eliminating any possibility of tuition tax credits being used to promote segregation. The bill provides, clearly and directly, that only tuitions paid to schools which do indeed meet with existing legislation would be eligible for tuition tax credits. We are thrilled that no new requirements or special tests are established, but that a strong, clear provision in existing law is continued and expanded in its scope.

While the proposed legislation quickly disposes of the criticism of promoting segregation, we believe that it is appropriate for more to be said in this area. In New York state, according to the Assistant Commissioner for Non-public Education, Ms. Joan Arnold<sup>3</sup>, the fastest growing type of school in the state is the small Christian academy, not the Catholic school, not the public school. By and large, the experience of the members of our organization as they have dealt with administrators of new schools is that the new schools are run by dedicated, concerned educators, and are anything but "segregationist". We do find that many schools are springing up because parents want them and are willing to sacrifice not just money but also temporary quality of facilities to achieve a quality of instruction and an inclusion of positive moral teaching in the students' experiences. We worry that some opponents of tuition tax credits are painting many good new schools with the broad brushes of accusations and not facts of segregation. These critics are missing the reasons for new schools arising, the failure of existing

schools to provide the education which parents want for their children.

This brings us to another aspect of tuition tax credits, the relation of public and private schools. Few things are more depressing to an educator than to see students missing the opportunities of a good education; this depression is more intense if the cause of the particular problem is not the student but the school itself. We want very much to see public schools thrive and flourish; to provide them with a monopoly in education would be to program their long-range downfall rather than support. We know that a dash of healthy competition does much to help us keep our own schools in good shape, and we would not want to see that denied to other schools, especially the public schools. We strongly believe that in order to have strong, healthy public schools, the competition of private schools is necessary. Tuition tax credits assist parents in selecting schools best for their children, may the best school win!

There is one last aspect of tuition tax credits which we would like to treat. One argument being posited against tuition tax credits is a rather vague reference to their constitutionality. Now we would be the first to acknowledge that we are not experts in constitutional law. We do, however, teach history to students. One of the most fundamental lessons of history is that people and understandings change and that change is a normal part of life. Hopefully, in the long run historically, these middle decades of the twentieth century will be seen as a time of great insight into human rights in many areas: race, sex, age, ethnic background, handicapping conditions, and so on. We take pride that our country has made great strides to giving the full freedom of being American to all its people. As

teachers, we must explain to our students how attitudes can change and must change. We believe that in relation to tuition tax credits, there has been a growth in our collective insight; we now recognize the fundamental rights of parents to direct the education of their children.

At this point, we ask your indulgence in allowing us to speak as teachers may have spoken when you were in school. We would say to you that the worst thing one can do with a question is not to ask it. Applied to tuition tax credits, we say that it is not right to leave the constitutional question unraised, but we also say that it must be raised in the proper forum: the combination of the legislative, executive and judicial branches working together, not the media or casual debate. Accordingly, we reject the argument that tuition tax credits are unconstitutional, instead we say that the question has never been raised formally and that it is now appropriate to do so; we are confident that the wisdom of our legislators, executives and judges will decide the question affirmatively.

Members of the Committee, we do thank you for receiving our words. We recognize that many more erudite and expert people have testified. We appreciate your hearing our experiences with parents who do seek to exercise their right to direct the education of their children, our happiness that the proposed legislation fosters strong schools in both the public and private domains, and our hope in the wisdom of the American Constitution and the lessons which we have learned from history. Finally, we do urge you to support S.550. Again, thank you.



## NOTES

- 1 James Coleman, Thomas Hoffer, and Sally Kilgore, Public and Private Schools, a report to the National Center For Education Statistics by the National Opinion Research Center, March, 1981, p. 71.
- 2 Virgil C. Blum, S.J., A Partial and Preliminary Report on Inner City Private Schools, Catholic League for Religious and Civil Rights. Milwaukee, WI, April 1980, pp. 2-3.
- 3 Oral Presentation to Non-public School Administrators, May 19, 1981, by Joan Arnold.

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## Center for Constitutional Studies

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### Summary of Testimony on the Tuition Tax Credit Legislation Submitted to the Senate Committee on Finance - June 1981

#### I. INTRODUCTION (pp. 1-2)

If enacted by Congress, this proposal would - beginning in the tax year of 1982 - provide a tax credit equivalent to half of tuition expenses up to \$500 per student attending an eligible elementary or secondary school, a vocational school or an institution of higher education. There have been several similar proposals to extend some tax benefit to those who incur educational expenses in addition to the payment of property and income taxes in support of public education. Like all tax credits, this proposal would have a significant impact on the federal treasury.

#### II. CONSTITUTIONAL ANALYSIS (pp. 2-23)

##### A. TAX CREDIT APPLIED TO HIGHER EDUCATION (pp. 3-6)

To determine the validity of governmental financial assistance to nonpublic, church-related education, the Court requires that the aid meet each of three standards: (1) the statute must have a valid secular purpose; (2) the primary effect of the statute must be one that neither advances nor inhibits religion; and (3) the statute must not implicate the government in excessive entanglement with religion, either by "comprehensive, discriminating, and continuing state surveillance" of religion or by virtue of the potential within a statute for creating "political division along religious lines." In the Supreme Court trilogy of cases affecting higher education, Tilton, Hunt and Rosmer programs involving both federal and state aid were upheld under the No-Establishment Clause. A recent summary affirmation by the Supreme Court, the Blanton case, indicates that the kinds of

restrictions appropriate for institutional assistance may not be constitutionally required with respect to aid to college students. Hence it is highly probable that the Court would sustain a college tuition tax credit against a challenge under the No-Establishment Clause.

B. ELEMENTARY AND SECONDARY EDUCATION (pp. 6-15)

Although the Court has allowed many forms of public assistance to church-supported colleges, it has invalidated nearly all recent attempts by state legislatures to provide support for nonpublic schools at the elementary and secondary level. In view of this history, the Court would certainly scrutinize a tuition tax credit as applied to pre-collegiate education more carefully than it would if the credit were allowable only for college tuition.

The proposal would certainly pass the first test: Congress should have no difficulty in asserting a valid secular purpose, whether of educational policy or of tax policy, for its enactment of the legislation. By the same token, the legislation would probably also pass the excessive entanglement test because the enforcement procedures required by this proposal would involve not a governmental surveillance of church-related schools, but the audit mechanism typical to any relation between a taxpayer and the Internal Revenue Service.

The test which would probably create the greatest difficulty for the Court in accepting this proposal is the primary effect test. In the Nyquist case (1973) the Court relied heavily on this test to invalidate a New York statute which provided for tax modifications for parents of children attending church-related elementary and secondary schools. Even though the support of these schools was indirect, the Court ruled that the "inevitable effect" of this tax benefit was "to aid and advance those religious institutions."

The Court cannot be expected to reverse Nyquist, but there are several features in the federal tax credit proposal which distinguish it from its ill-fated state analogue. It is perhaps obvious though not without significance that a federal tax credit would come before the Court as an act of Congress, and therefore in a posture of greater strength. For the Court throughout its history, except for three brief and rare periods of judicial activism, has usually deferred to the wishes of Congress in the exercise of the taxing and spending power. Secondly, the beneficiary class of the federal tax credit proposal would be considerably broader than that involved in the New York statute. Thirdly, the "child benefit" theory (a state may provide general welfare assistance to all students) seems in better favor among the Justices now than when Nyquist was decided. And fourthly, the Court has recently indicated a greater willingness to acknowledge a distinction between the secular educational functions of nonpublic schools and the sectarian religious mission of their sponsoring bodies. For these reasons it is reasonable to expect that the Court can be persuaded to distinguish Nyquist in deliberations on the constitutional validity of the tax credit proposal.

C. OTHER CONSTITUTIONAL CONSIDERATIONS (pp. 15-23)

In weighing this proposal Congress should be guided not only by the negative command of the No-Establishment Clause prohibiting a governmental establishment of religion, but also by the positive values asserted in the remainder of the First Amendment. Freedom of expression and communication provides one constitutional rationale for legislation of this sort, for educational choice is closely related both to the instrumentalist view that free speech is protected in order to promote greater political participation in our democracy, and to the personalist

view that the First Amendment protects every person's right to form beliefs and opinions. Secondly, the Free Exercise of Religion Clause might be used to support the claim that government "should put no unnecessary obstacles in the way of religious training for the young." Thirdly, the Equal Protection aspect of the Fifth Amendment Due Process Clause provides a constitutional basis for an equitable distribution of resources necessary for meaningful educational choice. Finally, in the light of Coit v. Green and Norwood v. Harrison it is clear that the Court will not countenance either a tax provision or an educational benefit which encourages or promotes racial discrimination in the admission of students or the hiring of faculty. An amendment would be necessary to bring the credit within the teaching of the Court.

### III. CONCLUSION (p. 23)

Our own conclusion is that with some amendments the tuition tax credit legislation may well survive a challenge under the No-Establishment Clause of the First Amendment, although on the basis of recent cases decided under this clause the Court would scrutinize more carefully any substantial benefit even indirectly accruing to church-related elementary and secondary schools than to independent institutions of higher education. And it is our view that the remainder of the First Amendment - Free Exercise of Religion, Freedom of Speech, Freedom of the Press, Freedom of Association, Freedom of Assembly, and Freedom to Petition the Government for Redress of Grievances - when viewed together with the guaranty of equality implicit in the Due Process Clause of the Fifth Amendment, could provide members of Congress with additional constitutional rationales to support this legislation as a permissible way to support freedom of educational choice for all members of our society.

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Testimony on the Tuition Tax Credit Legislation  
Submitted to the Senate Committee on Finance - June 1981

### I. INTRODUCTION

Since the early 1960's there have been before the Congress several proposals to provide a tax benefit for those who incur educational expenses over and above the property and income taxes levied for the support of public education. These proposals have taken various forms, some providing a credit, some a deduction, and others an additional personal exemption for each student supported by a taxpayer. Policy makers debating the wisdom of these proposals must acknowledge that any tax incentive or benefit has a direct impact on the federal treasury and might, therefore, be treated as a tax expenditure.<sup>1</sup> Since other scholars have studied the likely budgetary impact<sup>2</sup> and the potential distributive effect<sup>3</sup> of these proposals, no economic analysis will be presented here. The chief focus of these comments will be on the constitutional questions presented by one of these proposals, the tuition tax credit legislation introduced by Senators Moynihan and Packwood.<sup>4</sup>

To facilitate the discussion of this legislation a section-by-section digest of the bill might be helpful. Section 2(a) of the bill seeks to amend the Internal Revenue Code by adding a new section 44C, authorizing a tax credit equal to 50% of the tuition, not to exceed \$500 per student, paid by a taxpayer for attendance at an eligible educational institution by the taxpayer, a spouse or dependents. The credit is available to spouses filing a joint return. A taxpayer filing a separate return may claim the credit because of expenses incurred on behalf of a spouse if the spouse had no gross income for the taxable year and is not claimed as a dependent of another taxpayer.

The credit is allowable for tuition paid to any elementary or secondary schools, to vocational schools which come within the meaning of section 195(2) of the Vocational Education Act of 1963,<sup>5</sup> and to colleges and universities which come within the meaning of an "institution of higher education" under sections 1201(a) and 491(b) of the Higher Education Act of 1965,<sup>6</sup> or to a similar institution certified by the Commissioner of Education.

A taxpayer may not take both the credit and a deduction for tuition expenses incurred in order to maintain or improve skills required in his trade or business under Internal Revenue Regulation 1.162-5.

Sec. 2(b) of the bill would authorize a refund to the taxpayer of the difference between the credit and the tax liability, where the credit exceeds the tax liability.

Sec. 3 states that amendments to the Internal Revenue Code proposed in this bill would take effect in the tax year beginning January 1, 1982.

## II. CONSTITUTIONAL ANALYSIS

Over the past ten years the Supreme Court has drawn a bright line between precollegiate and postsecondary nonpublic education.<sup>7</sup> Largely because the Court has adopted a stereotypical characterization of what transpires in Church-related institutions at these two levels, it has routinely upheld many forms of federal and state assistance both to institutions and to students at colleges and universities,<sup>8</sup> while it has invalidated many forms of state assistance to private elementary and secondary schools as well as to students attending these schools.<sup>9</sup> Assuming without conceding the validity of the Court's characterization of Church-supported higher education and precollegiate education, we structure our constitutional analysis within the framework of this

distinction. Our conclusion is that a strong argument can be made for the constitutionality of this tax proposal as it relates to both levels of education, but that it is more difficult to overcome existing legal precedents which tend to disfavor the validity of a tax credit as it relates to church-supported elementary and secondary schooling.

A. HIGHER EDUCATION. Since 1971 the Court has used a tripartite test for determining the validity of public funding of nonpublic schools under the No-Establishment Clause of the First Amendment. Announced in a 1970 case upholding a state statute granting a tax exemption to churches and religious associations,<sup>10</sup> the test was applied a year later to the elementary and secondary educational context in Lemon v. Kurtzman<sup>11</sup> and to the higher educational context in Tilton v. Richardson.<sup>12</sup>

The first element of the test is that "the statute must have a secular legislative purpose."<sup>13</sup> Although a statutory scheme may be invalidated if it fails to meet any one of the three tests the Court has fashioned for No-Establishment Clause cases, no plan has ever been struck down for failure of the legislature to articulate a plausible secular purpose. It is safe to say that Congress can as easily devise a statement of purpose for the tax credit proposal which would pass this first "test," as it did in the construction grant program (upheld in Tilton)<sup>14</sup> or as the South Carolina legislature did when it authorized the issuance of state revenue bonds for construction on church-related college campuses (upheld in Hunt v. McNair)<sup>15</sup> or as the Maryland legislature did when it provided noncategorical grants as annual subsidies to eligible colleges and universities (upheld in Roemer v. Bd. of Public Works of Maryland)<sup>16</sup> or as the Tennessee legislature did in formulating a reason for its program of assistance to students attending both public and nonpublic colleges, universities,



and vocational or technical institutes (upheld by the summary affirmance in Americans United for the Separation of Church and State v. Blanton).<sup>17</sup>

The second test requires that "the principal or primary effect [of a statute] must be one that neither advances nor inhibits religion."<sup>18</sup> Although the Court has invalidated several state schemes supporting private elementary and secondary education on the grounds that those plans failed to meet this second test, it has yet to strike down a program of public funding in support of church-related colleges and universities or of students attending these institutions.<sup>19</sup> But in the higher education trilogy of Tilton, Hunt, and Roemer, the Supreme Court has imposed some limitations on institutional assistance, noting that aid programs unrestricted as to use would run afoul of the No-Establishment Clause even if the sectarian colleges and universities did not constitute a majority of the beneficiary class. Thus in Tilton the Court paid little or no attention in its constitutional analysis to the fact that the four church-related colleges sued constituted only a small number of the institutions benefited by the federal construction grant program. Similarly in Hunt the Court imposed restrictions on sectarian use of the single Baptist college which benefited from the South Carolina program of revenue bonds. And in Roemer similar restrictions were imposed on the church-related recipients of the Maryland grants, even though they constituted less than a third of the beneficiary class.

More recently, the Court appears to have stated that restrictions which might be constitutionally mandated with respect to institutional assistance at the college and university level need not apply to student aid at the same level. For as one commentator on the Blanton decisions has noted, the Supreme Court by summarily affirming the decisions of the district courts in Tennessee and North Carolina did

not evince any interest in examining the issue of whether the institutions indirectly benefited by the student assistance in question were in fact "pervasively sectarian" in character.<sup>20</sup> By contrast, the Court continues to display keen interest in such allegations at the primary and secondary level.<sup>21</sup> So it seems safe to predict that the Court would affirm the constitutionality of a federal income tax credit for college tuition even though the college attended by the taxpayer, his spouse or dependent was church-related.

The third test used by the Court in No-Establishment Clause cases is the "excessive entanglement" test.<sup>22</sup> A program may violate the First Amendment if it requires an on-going administrative interaction between the government and the church-related institution benefited by the legislation<sup>23</sup> or if the legislation has the potential for generating "political divisions along religious lines."<sup>24</sup> The "political divisiveness" test has been used by the Court only once in recent cases involving higher education,<sup>25</sup> and it has never been relied on to invalidate aid at this level. For those reasons it constitutes no formidable barrier to a college tuition tax credit, and further comment on this test will be reserved for the application of a tax credit at the elementary and secondary level.

The administrative entanglement test likewise presents no insurmountable obstacle to a college tuition tax credit. For the enforcement of such a provision in the Tax Code would chiefly involve a relationship between the government and those taxpayers whose tax returns would be audited by the Internal Revenue Service. It is, of course, conceivable that the IRS would involve itself in some way with the church-related institutions indirectly benefited by the tax credit. For example, they might scrutinize the beneficiary colleges and universities to ascertain whether they practice invidious racial discrimination in

student admissions or faculty employment. Although the Revenue Ruling <sup>26</sup> which disallows tax exempt status for racially segregated schools appears to have originated with the concern that the federal government should not by its tax policy encourage, foster, or support a system of schools operated on a racially segregated basis <sup>27</sup> as an alternative to white students to avoid public schools desegregated under the doctrine of Brown v. Bd. of Education, <sup>28</sup> the scope of this ruling could easily be enlarged by the Internal Revenue Service to include higher education as well. In that event, government officials would be involved in some surveillance of a church-related institution, but such monitoring would probably be sporadic and episodic rather than the continuous sort which the Court ruled fatal at the elementary and secondary level in Lemon. <sup>29</sup> The degree of administrative entanglement between the government and religious groups which would be necessitated by a college tuition tax credit would not be so excessive as to violate the constitution.

In sum, although the institutions indirectly benefited by a tuition tax credit would include church-related or after Blanton, perhaps even "pervasively sectarian" college and universities, it is highly probable that the Supreme Court would sustain a college tuition tax credit against an attack under the No-Establishment Clause of the First Amendment.

#### B. ELEMENTARY AND SECONDARY EDUCATION.

For purposes of Equal Protection analysis under the Fourteenth Amendment, the Court in recent decades has fashioned a test of stricter scrutiny when the classification involved in the statute under question includes a suspect category such as race. <sup>30</sup> Nonpublic church-related grammar schools and high schools as well as the students who attend them, appear in the light of several recent cases to be an analogously

"suspect class." For the Court has virtually constructed an inverse ratio between the command of the No-Establishment Clause and the level of nonpublic education benefited by public assistance. What the constitution allows at a college is forbidden at the precollegiate level.

For example, in Tilton Chief Justice Burger opined that religion would not "seep" into the use of the buildings constructed with federal grants.<sup>32</sup> And he apparently felt that there is little likelihood that "religion would permeate the area of secular education" on a college campus because "religious indoctrination is not a substantial purpose or activity of these church-related colleges and universities..."<sup>33</sup> As with the rational basis "test" employed in many Equal Protection cases in the 1960's, minimum scrutiny in higher education cases is the order of the day.

No such minimal scrutiny exists at the level of elementary and secondary education. At this level the Justices are more inclined to repudiate the distinction between secular education functions undertaken by a nonpublic school and the religious mission of a sponsoring body.<sup>34</sup> Indeed, the Justices search not only for actual abuse, such as direct governmental support of overt religious proselytizing, but for "the potential for impermissible fostering of religion" even where this potential "under the circumstances [is] somewhat reduced."<sup>35</sup> At times this inclination of the Court moves even an ardent separatist like Justice Marshall to concede the folly of conducting extensive searches for hidden dangers out of a "fear of imaginable but totally implausible evils."<sup>36</sup>

The result of state aid cases since Lemon and Tilton has been

consistent at least in maintaining a form of symmetry. The Court allows most forms of aid at the college level, and it invalidates at the pre-collegiate level the following forms of state assistance: grants for maintenance and repair of facilities and equipment used for education in low-income urban areas,<sup>37</sup> tuition reimbursement grants to low-income parents,<sup>38</sup> tax adjustments for parents who paid tuition to nonpublic schools,<sup>39</sup> subsidies to nonpublic schools for administering state-prepared "regents examinations" and teacher-prepared tests on secular subjects,<sup>40</sup> loan of instructional materials and equipment (other than textbooks) not readily divertable to religious purposes,<sup>41</sup> "auxiliary services" (e.g., remedial instruction, speech and hearing services) provided by public employees on the premises of nonpublic schools,<sup>42</sup> and the provision of "such field trip transportation and services to nonpublic school students as are provided to public school students."<sup>43</sup> From a review of the Supreme Court's decisions on public assistance to church-related nonpublic education at the elementary and secondary levels, it is certain that the Court would scrutinize a tuition tax credit more carefully at the precollegiate level than at the level of higher education.

Although the bill as drafted contains no findings of fact or statement of purpose, the tax credit proposal would surely survive a constitutional challenge alleging that it failed to state a valid secular purpose. If the Congress wished to assert an educational policy as the basis of such an enactment, it would have only to borrow from the statements of purpose found acceptable in the many State statutes reversed by the Court on other grounds.<sup>44</sup> And if the Congress chose to stress reasons of tax policy as the basis for its judgment, valid secular purposes for such legislation abound.<sup>45</sup>

A tax credit for tuition paid at the precollegiate level would inevitably invite a constitutional challenge on the basis that the primary effect of the credit would be impermissible government assistance of religion. Within the line of cases from Everson to Wolman, the most directly analogous is Nyquist, where the Court invalidated New York state income tax "modifications" for parents of children attending nonpublic elementary and secondary schools on the grounds that the "inevitable effect" of this tax benefit was "to aid and advance those religious institutions." <sup>46</sup>

Since Nyquist is of such recent vintage, it cannot be expected that the Court would reverse itself on a tax credit proposal similar in many respects to the New York legislation which it struck down in 1973. But there are several features to the Packwood-Moynihan bill not present in the New York statute which might be argued in an attempt to distinguish Nyquist.

First, the Packwood-Moynihan bill would come before the Supreme Court in a stronger posture than its New York counterpart for the simple reason that it would be an act of Congress. To say this is not to assert that the Court is powerless to reverse an act of Congress which it finds violative of the constitution. Marbury v. Madison <sup>47</sup> instructs us to the contrary. But it should be noted that since 1803, when Marbury was decided, only six acts of Congress have been invalidated under the First Amendment; <sup>48</sup> and only one of those cases, Tilton, involved the No-Establishment Clause.

It should also be noted that the Court in modern times is much more reluctant than it was in the 1890's, and the 1920's and '30's, to defeat tax legislation enacted by Congress as violative of the Constitution. Because the Court in 1895 had invalidated a modest income

tax which it perceived as the "first onslaught of socialism,"<sup>49</sup> a constitutional amendment was required. The Sixteenth Amendment was ratified in 1913, and since that time the Court has had only two "activist" periods in which it invalidated many forms of federal tax legislation. In 1920's and '30's the Court struck down tax provisions which did not square with the conservative economic views espoused by a majority of the Justices.<sup>50</sup> From 1936 to 1968 the Court did not strike down any provision of the federal tax laws as violative of the Constitution. The second "activist" period occurred at the zenith of the recent "due process revolution." Since 1968, the Court has on four occasions invalidated provisions of federal tax laws insofar as they abridged the right to be free from self-incrimination protected by the Fifth Amendment.<sup>51</sup> To this date, the Court has never struck down a federal tax law on First Amendment grounds.

Although federal statutes generally fare better before the Supreme Court than state statutes and municipal ordinances, the Court in modern times has evinced no desire to review the details either of the Internal Revenue Code or of the tax laws of the several states. Nyquist represented the first time in its recent history that the Court invalidated a state tax provision on constitutional grounds. To the extent that this history manifests both the Court's deference to state legislatures in the details of their tax codes and an even greater deference to Congress in shaping the contours of federal tax policy than it gives to the state legislatures, the Packwood-Moynihan bill is distinguishable from its state counterpart, and would likely receive more favorable consideration from the Court.<sup>52</sup>

Secondly, this congressional legislation would make available a tax credit for tuition paid at all levels of education. The beneficiary class, then, is not restricted to a group "composed

exclusively or even predominantly of religious institutions."<sup>53</sup> To the extent that a federal income tax credit would be available to all taxpayers as a means of facilitating or enabling choice of education at a variety of educational institutions, including public and nonpublic colleges and vocational schools, and nonpublic grammar schools and high schools, it would be less easy for the Court to assert that the primary effect of the legislation was to subsidize the "sectarian activities of religious schools."<sup>54</sup>

Thirdly, if the bill were to be reviewed by the Court as it is currently composed, it would have a better chance of being upheld than did the New York statute struck down in Nyquist. In rejecting the contention that the channeling of the tuition grants and tax credits directly to the parents rather than to the schools insulated the programs from further scrutiny, the majority in Nyquist, led by Justice Powell, appeared to have rejected the "child benefit" theory espoused by the Court in Bd. of Education v. Allen.<sup>55</sup> According to this theory, the federal government and the several states may, consistently with the No-Establishment Clause, fund general welfare assistance provided to benefit all students whether in a public or a nonpublic school. But if Justice Powell repudiated this theory in Nyquist, he appears at least to have changed his mind on the matter since then. For he joined Justice Stewart's opinion in Meek and Justice Blackmun's plurality opinion in Wolman, both of which incorporate the child benefit theory into their rationale. It would seem that this theory commands the acceptance of a majority of the Justices on the Court as presently constituted. The following argument, then, can be made for the constitutionality of a tax credit as it relates to elementary and secondary education: the credit would have the direct effect of enabling the



taxpayer to exercise broader selection in the way his dependents are educated.<sup>56</sup> The indirect effect of assisting the religious body sponsoring the educational experience would, on this view, be incidental and permissible.

Fourthly, the Court has given a recent indication that it is willing to acknowledge a distinction between the secular educational function of nonpublic schools at the elementary and secondary levels, and the sectarian religious mission of their sponsoring bodies. The Nyquist Court reduced this distinction to a minimum.<sup>58</sup> And the Meek Court virtually obliterated the distinction.<sup>59</sup> But the Wolman Court revived the distinction and breathed new life into it.<sup>60</sup> Hence one can now argue more easily than one could two years ago after reading Meek, four years ago after reading Nyquist, or six years ago after reading Lemon that the Congress would not be establishing a religion were it to allow all taxpayers to take a federal income tax credit equivalent to 50% of the tuition expenses incurred for the education of the taxpayer's spouse or dependents.

The Court will probably be asked to adjudicate the constitutional validity of this legislation. In such a test case the Court would undoubtedly apply to this legislation the tripartite test it has devised for cases arising under the No-Establishment Clause. As we suggested above in the section on higher education, the Court would probably not tarry long in upholding whatever secular purpose the Congress might choose to articulate as the basis for the legislation.

It is conceivable that the Court might invalidate this tax scheme on the grounds that the primary effect of the legislation is tantamount to an impermissible establishment of religion. To a great degree such a conclusion results from the continued reliance by some members of the Court on unsupported generalizations about nonpublic

schools at the elementary and secondary levels.<sup>61</sup> Though the Court has occasionally expressed the view that religion "seeps into" or even "permeates" virtually all educational experiences occurring in church-supported elementary and secondary schools, it has not cited any credible empirical evidence as the basis of this view. Given the tendency of the Court to maintain unsupported stereotypes, it would seem useful for Congress to generate, during hearings on this bill and similar legislation, a full factual record on what is happening in America's schools<sup>63</sup> and why a federal tax policy maximizing freedom of choice in education may be a wise one.<sup>64</sup> During such hearings, Congress might also invite the testimony of legal historians who are prepared to argue the inadequacy of the Court's exclusive reliance on the Virginia experience as the historical basis for its reading - or as some would maintain, its misreading - of the purpose and meaning of the First Amendment since Everson.<sup>65</sup>

The last part of the tripartite test adopted by the Court as its constitutional touchstone in cases involving public funding of church-related institutions poses the questions: does the legislation promote excessive administrative entanglement between the government and religion, or does it foster political divisiveness along religious lines? Three brief comments are in order on the entanglement test as applied to a credit for tuition paid at the elementary and secondary levels. First, the same comment made above with respect to the operation of an enforcement procedure at the college level applies here as well: whatever policing of the provisions of this legislation might be necessary would involve the IRS and the taxpayer, not the HEW inspector and the parochial schools. It is not clear that giving to IRS officials another item for them to enforce through the audit mechanism would necessarily lead to any official contact with religious

groups. In any event, it is doubtful that such contact would constitute the sort of "comprehensive, discriminating, and continuing state surveillance" of religion found excessive in Lemon.<sup>66</sup>

Secondly, the excessive entanglement test - by its terms a matter of degree<sup>67</sup> no longer commands as much respect for its utility or accuracy as a standard of constitutionality as it used to among the Justices. Chief Justice Burger, for example, who authored the test in Walz and extended it to the educational context in Lemon and Tilton, now seems mildly soured by the fruit of the Lemon tree. In Burger's view, Justice Stewart's use of the entanglement test in Meek to invalidate the auxiliary services portion of the Pennsylvania statute conflicted both with Allen and Lemon.<sup>68</sup> "Certainly," Burger wrote, "there is no basis in 'experience and history' to conclude that a State's attempt to provide - through the services of its own state-selected professionals - the remedial assistance necessary for all its children poses the same potential for unnecessary administrative entanglement... which concerned the Court in Lemon v. Kurtzman."<sup>69</sup> And Burger saw "at least as much potential for divisive political debate in opposition to the crabbed attitude the Court shows in this case."<sup>70</sup>

Thirdly, the "political divisiveness" aspect of this test has also suffered something of a demise. This is due in part, no doubt to intense scholarly criticism that argues that a test which calls for political consensus and which tends to stifle "robust, spirited debate" violates at least the spirit of the remainder of the First Amendment, with its protections of free exercise of religion, freedom of speech and association, freedom of the press, and freedom to petition the government for redress of grievance. Even if a majority of the Court were still persuaded that the potential for political conflict along religious lines remains a warning signal not to be

ignored,"<sup>71</sup> a "political divisiveness" argument would by the very terms of this test be misplaced in the context of this legislation. For like other programs of public support of higher education, this proposal is likely to benefit many more taxpayers than those attending or supporting students at church-related institutions; and it would not require recurrent legislative action. To the extent that the credit could be expanded or contracted, it is predictable that Congress would be lobbied by special interest groups. But it seems remote indeed that the Court would invalidate the current proposal on the mere suspicion that it might create political division along religious lines. Finally, it should be noted that the "political divisiveness" test has never been relied on by the Court as the sole basis for invalidating any state or federal legislation.

While final judgment must, of course, be reserved for the Supreme Court, it is our conclusion that with some amendments the tuition tax credit legislation may well survive constitutional challenge under the tripartite test used by the Court in its review of statutes affording public assistance to those who wish to pursue their educational goals in the nonpublic church-related sector.

#### C. OTHER CONSTITUTIONAL CONSIDERATIONS

In weighing the factors for and against legislation of this sort, the Congress ought not to be guided only by recent cases decided under the No-Establishment Clause of the First Amendment. For the Constitution contains many other themes relevant to the deliberations of Congress on such legislation. In short, the Constitution ought not to be regarded merely as a negative indicator of what Congress or the Executive may not do, but also as a rich source of the social values significant to this Republic which can and should be considered in

the formation of public policy. Such values include freedom of expression, the free exercise of religion, and the equitable distribution of governmental resources for the purpose of education. If only because members of the Congress no less than the members of the federal Judiciary take an oath to support the Constitution of the United States, the protection and promotion of these constitutional values ought to be regarded as a congressional obligation of the highest order.

(1) FREEDOM OF EXPRESSION

Members of Congress might be motivated to support this legislation because they see in it a means of promoting the value of freedom of communication and expression.<sup>72</sup> For enhancing the value of freedom of educational choice results not only in legitimate diversity of educational experiences.<sup>73</sup> Expanded freedom of educational choice also supports the underlying values of the First Amendment: political participation in the democracy and the dignity of the human person.

Alexander Meiklejohn articulated a political or instrumentalist view of the First Amendment. The very title of his book on the subject, Political Freedom,<sup>74</sup> indicates this perspective. In a subsequent article he wrote: "The revolutionary intent of the First Amendment is, then, to deny all subordinate agencies authority to abridge the freedom of the electoral power of the people."<sup>75</sup> Justice Brennan relied on Meiklejohn in speaking of the value of "uninhibited, robust and wide-open" debate about public issues in the context of freedom of the press.<sup>76</sup> In Brown v. Bd. of Education<sup>77</sup> the Court did not deal directly with a First Amendment challenge, but laid to rest the racially animated "separate but equal" doctrine on Fourteenth Amendment grounds. But in a famous dictum the Court highlighted the notion that education serves a political end:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, <sup>78</sup> is a right which must be made available to all on equal terms.

Because nonpublic as well as public schools contribute in building the "foundation of good citizenship," they too merit consideration when Congress makes available a benefit in the educational area.

The second strand of First Amendment analysis does not negate the instrumentalist or political view, but incorporates it within a broad range of personal rights which the amendment protects. Thomas Emerson has grouped into four categories the "values sought by the society in protecting the right to freedom of expression":

Maintenance of a system of free expression is necessary (1) as a method of assuring individual self-fulfillment, (2) as a means of attaining the truth, (3) as a method of securing participation by the members of society in social, including political, decision-making, and (4) as a means of maintaining the balance between stability and change in society.<sup>79</sup>

The stress in Emerson's theory is on personal development:

...every man - in the development of his own personality - has the right to form his own beliefs and opinions. Hence suppression of belief, opinion and expression is an affront to the dignity of man, a negation of man's essential nature.<sup>80</sup>

The Court has not explicitly alluded to Emerson's theory in any First Amendment decision of which we are aware. But the Court has espoused a view of the relatedness of the rights protected by the amendment and has spoken of these core values as protecting freedom of the mind as well as of conscientious choice. For example, in Thomas v. Collins Justice Rutledge wrote:

It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable.... This conjunction of liberties is not peculiar to religious activity and institutions alone. The First Amendment gives freedom of mind the same security as freedom of conscience.<sup>81</sup>

Since education - both in the nonpublic as well as in the public sector - is concerned with mental and personal development, and since schooling is inevitably involved in the formation of beliefs, members of Congress ought to weigh seriously the general values underlying the First Amendment - both personal and political - in their deliberation on this legislation.

#### (2) FREE EXERCISE OF RELIGION

The constitutional analysis of the bill provided above focused on the No-Establishment Clause of the First Amendment because the Court has relied on that clause almost exclusively in its scrutiny of state and federal aid to nonpublic education. In Walz, however, Chief Justice Burger acknowledged the existence of a tension between the two Religion Clauses, "both of which are cast in absolute terms and either of which, if expanded to a logical extreme would tend to clash with the other."<sup>81</sup> For Burger, such a clash occurred in Nyquist when the Court in his view expanded the demands of the No-Establishment Clause to a logical extreme and thereby ignored the experience and history on which prior First Amendment cases had been decided.<sup>82</sup> According to Burger, it had been:

the experienced judgment of various members of this Court over the years that the balance between the policies of free exercise and establishment of religion tips in favor of the former when the legislation moves away from direct aid to religious institutions and takes on the character of general aid to individual families.<sup>83</sup>

Justice White made a similar argument in his Nyquist dissent:

Constitutional considerations aside, it would be understandable if a State gave... parents [who prefer to send their children to nonpublic schools] a call on the public treasury up to the amount it would have cost the State to educate the child in public school, or, to put it another way, up to the amount the parents save the State by not sending their children to public school.

In light of the Free Exercise Clause of the First Amendment, this would seem particularly the case where the parent desires his child to attend a school that offers not only secular subjects but religious training as well. A State should put no unnecessary obstacles in the way of religious training for the young.<sup>84</sup>

Although a majority of the Court was not persuaded by the Free Exercise claim presented in Nyquist,<sup>85</sup> there is nothing to prohibit members of Congress from being more sensitive to the position that "the free exercise principle should be dominant in any conflict with the anti-establishment principle."<sup>86</sup> As Professor Laurence H. Tribe has written in his treatise on American Constitutional Law:

Such dominance is the natural result of tolerating religion as broadly as possible rather than thwarting it at all costs even the faintest appearance of establishment.<sup>87</sup>

### (3) EQUAL PROTECTION OF THE LAWS

Another factor for Congress to consider is the value of equality as it relates to educational opportunity. It is clear from Pierce v. Society of Sisters<sup>88</sup> that the state may not monopolize the educational process to the extent of compelling all students to attend a public school. More recently in Wisconsin v. Yoder<sup>89</sup> the Court affirmed a limited right of students to an immunity from a compulsory school attendance law, where the objection to attendance was based on religious convictions. But the Court has not expanded this sort of religiously based immunity into a theory of an entitlement of all students - whether in public or nonpublic schools - to share in the educational resources which government controls and distributes. Indeed, the recent equal



financing case, San Antonio School District v. Rodriguez<sup>90</sup> and the more recent Medicaid abortion funding cases<sup>91</sup> together teach that although an individual may enjoy a right protected by the Constitution, the existence of such a right does not by itself create a corresponding obligation upon the state to fund the exercise of the right at all, much less on an equal footing.

When an equal protection argument for funding of church-supported nonpublic education on an equal basis with nonsectarian private education was presented in 1973, the Court rejected it unambiguously. Justice Powell wrote in Sloan v. Lemon:

The argument is thoroughly spurious.... Valid aid to non-public, nonsectarian schools would provide no lever for aid to their sectarian counterparts. The Equal Protection Clause has never been regarded as a bludgeon with which to compel a State to violate other provisions of the Constitution. Having held that tuition reimbursements for the benefit of sectarian schools violate the Establishment Clause, nothing in the Equal Protection Clause will suffice to revive that program.<sup>92</sup>

And in the context of a successful challenge to a Mississippi program whereby textbooks were loaned to students at racially discriminatory private academies, Chief Justice Burger observed in dictum:

In Pierce, the Court affirmed the right of private schools to exist and to operate; it said nothing of any supposed right of private or parochial schools to share with public schools in state largesse, on an equal basis or otherwise. It has never been held that if private schools are not given some share of public funds allocated for education that such schools are isolated into a classification violative of the Equal Protection Clause.<sup>93</sup>

The Equal Protection argument need not, of course, be a bludgeon. Legal scholars<sup>94</sup> and philosophers<sup>95</sup> have fashioned more subtle arguments for an equitable distribution of resources necessary for meaningful educational choice than either Justice Powell or Chief Justice Burger acknowledged in 1973. Indeed, on the same day that Burger wrote the dictum in Norwood v. Harrison cited above, he wrote in dissent to the Nyquist decision:

In the instant cases as in Everson and Allen, the States have merely attempted to equalize the costs incurred in obtaining an education for their children.... It is no more than simple equity to grant partial relief to parents who support the public schools they do not use.<sup>96</sup>

Although the Court as currently composed has not demonstrated an eagerness to engage in decision-making that would seek to distribute governmental resources more equitably, this may be as much based on the Justices' view of the proper functions of the judiciary and the legislative branch as it is on their view of the propriety of the substantive results of some of their recent decisions. And even if such judicial modesty is not the sole basis for these decisions, Congress need not and should not wait for directions from the Court on how to exercise the taxing and spending power committed to the legislative branch by Article I of the Constitution.

A brief historical memory suffices to make this point. For there would have been no New Deal had the Congress in the 1930's deferred to the economic preferences of Justices like Willis Van Devanter, James C. McReynolds, George Sutherland, or Pierce Butler. It must also be noted that the current Court has not indicated a strong desire to engage in the sort of open confrontation with Congress relished by the "four horsemen." Hence if Congress were to enact legislation seeking to include students attending nonpublic schools on an equitable basis as beneficiaries of governmental resources, it is doubtful that the Court would destroy such efforts in a cavalier way.

Final judgment on legislation must of course be reserved for the Court. For as Chief Justice Marshall wrote in Marbury, "it is emphatically the province and duty of the judicial department to say what the law is ...."<sup>97</sup> But Congress has at least an initial role to play in determining the constitutionality of legislation which it enacts under its Article I powers. By articulating a variety of constitutional

values - freedom of communication and expression, free exercise of religion, equal protection of the laws, as well as the anti-establishment of religion principle - as the legislative purpose or rationale of enacting this proposed tax benefit, Congress could be of service to the Court in the determination of the constitutional validity of this legislation. As Justice Bushrod Washington wrote in Ogden v. Saunders:

It is but a decent respect to the wisdom, integrity, and patriotism of a legislative body, by which any law is passed, to presume in favor of its validity, until its violation of the Constitution is proved beyond a reasonable doubt.<sup>98</sup>

(4) RACIAL DISCRIMINATION

The bill as currently drafted authorizes a tax credit for tuition paid to an educational institution, without regard to whether the institution maintains a policy of racial discrimination in student admissions and faculty hiring and promotion.<sup>99</sup> If the legislation were enacted without any language to correct this oversight, federal tax policy supporting and even encouraging the congressional taxing and spending power would have been exercised in a manner that would support and even encourage the undoing of the educational policy formulated in Brown v. Board of Education<sup>100</sup> and its progeny.<sup>101</sup> As was pointed out above, such a result is contrary both to case law and Revenue Rulings. But this result could be avoided by adding to the definition of an "eligible educational institution" language

defining an eligible institution as a charitable, tax-exempt organization under 501(c) (3) of the Internal Revenue Code, thereby incorporating by reference the revenue ruling referred to above. Or Congress could assert national educational and tax policy independently of the existing Revenue Ruling, by adding language like that found in a bill currently before the Minnesota legislature, H.F. 1449, which defines a nonpublic school eligible to

participate in an educational grant program as a "school ... other than a public school, wherein a resident of Minnesota may legally fulfill the compulsory school attendance requirements..., and which meets the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352)." It should be noted that the President's Commission on School Finance recommended in its 1972 Report that aid to nonpublic schools be conditioned upon full compliance with the Civil Rights Act of 1964, and full accountability to the public concerning enrollment data.<sup>102</sup>

### III. CONCLUSION

Our own conclusion is that with some amendments the tuition tax credit legislation may well survive a challenge under the No-Establishment Clause of the First Amendment, although on the basis of recent cases decided under this clause the Court would scrutinize more carefully any substantial benefit even indirectly accruing to church-related elementary and secondary schools than to independent institutions of higher education. And it is our view that the remainder of the First Amendment - Free Exercise of Religion, Freedom of Speech, Freedom of the Press, Freedom of Association, Freedom of Assembly, and Freedom to Petition the Government for Redress of Grievances - when viewed together with the guaranty of equality implicit in the Due Process Clause of the Fifth Amendment, could provide members of Congress with additional constitutional rationales to support this legislation as a permissible way to support freedom of educational choice for all members of our society.<sup>103</sup>

## FOOTNOTES

1. See Statement of Stanley S. Surrey on the Tax Expenditure Budget, In Hearings on Economic Analyses and Efficiency in Government - Before the Subcommittee on Economy in Government of the Joint Economic Comm., 91st Cong., 1st Sess. (Sept. 16, 1969); Surrey, "Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures," 83 Harv. L. Rev. 705(1970); S. Surrey, Pathways to Tax Reform (1973). Partly because of the views of Professor Surrey, federal law now requires a listing of tax expenditures in the budget. P.L. 93-344, 88 Stat. 297, 31 U.S.C. §§ 1301 et seq. The FY 1978 federal budget cites the Congressional Budget Act of 1974 which defined tax expenditures as "revenue losses attributable to provisions of the Federal government tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability." It then provides a current definition of the term: "Tax Expenditures are one means by which the Federal government pursues public policy objectives and, in most cases, can be viewed as alternatives to budget outlays, credit assistance, or other instruments of public policy." Special Analyses, Budget of the U.S. Government, FY 1978, 119(1977) (emphasis supplied).
2. In 1977 Senators Packwood and Moynihan estimated that their proposal would entail a revenue loss of \$4.7 billion in the tax year beginning January 1, 1980, compared to the estimated FY 1980 budget of \$550 billion, "this legislation [would cost] less than 1 percent of that projection." 123 Cong. Rec. S15626 (daily ed. Sep. 26, 1977). Opponents of the bill, as might be expected, projected a higher cost for enactment of the measure (\$6 billion in FY 1980), but they have not yet published an account of how they reached this conclusion. News Release, Church-State News Service, Sep. 27, 1977. Senator William Roth (R.-Del.) author of S.311, a bill which would have provided for a college tuition tax credit, and which passed the Senate in 1976 as a rider to the Social Security legislation, estimated that the cost of this legislation would be \$1.3 billion in 1978, \$1.7 billion in 1979, and \$2 billion in 1980. 123 Cong. Rec. S927 (daily ed. Jan. 18, 1977). The Congressional Budget Office projected that the cost of the Roth bill would be \$1.389 billion in 1978, \$1.852 billion in 1979, and \$2.32 billion in 1980. "Response to Questions from the Senate Budget Committee," Mar. 17, 1977. The Policy Analysis Service of the American Council on Education stated that the probable cost of the Roth bill would be \$1.53 billion in 1978, \$1.971 billion in 1979, and \$2.41 billion in 1980. T. Corwin and P. Knepper, An Analysis of S.311: The College Tuition Relief Act 17, 43(1977).
3. The ACE report cited above, note 2, assesses the distributional impact of a college tuition tax credit both on the taxpaying beneficiaries (students and their families) and the types of institutions which would be affected by the legislation. *Id.* pp. 6-8, 18-22. The authors also estimate the dynamic implications of higher education tax credit, such as changes in student enrollment (increase in total enrollment, shift from part-time to full-time

enrollment, shift from public two-year colleges to public four-year colleges, and shift from public to private institutions) and changes in institutional pricing policy. Id. pp. 23-27. For an economic analyses of aid to nonpublic schools, see West, "An Economic Analyses of the Law and Politics of Nonpublic School 'Aid'," 19 J. Law and Economics 79(1976).

4. S. 550, 97th Cong., 1st Sess. (1981).
5. The bill adopts by reference the statutory definition of a vocational educational school found in The Vocational Education Act of 1963, P.L. 88-210, 77 Stat. 409, as amended by P.L. 94-482, 20 U.S.C. 1248.
6. The bill adopts by reference the statutory definition of an institution of higher education found in the Higher Education Act of 1965, P.L. 89-329, 79 Stat. 1251, 20 U.S.C. 403.
7. See, e.g., Gianella, "Lemon and Tilton: The Bitter and the Sweet of Church-State Entanglement," 1971 S.Ct.Rev. 147.
8. See Americans United for the Separation of Church and State v. Blanton, 98 S.Ct. 39(1977) (affirming summarily a district court judgment upholding the validity of state financial assistance to students at church-related colleges); Smith v. Board of Governors of the University of North Carolina, 98 S.Ct. 39(1977) (same); Roemer v. Bd. of Public Works of Maryland, 426 U.S. 736(1976) (upholding annual noncategorical grants to private colleges); Hunt v. McNair, 413 U.S. 734(1973) (upholding issuance of state revenue bonds benefiting a church-sponsored college); and Tilton v. Richardson, 403 U.S. 672(1971) (upholding federal construction grants for facilities used for a secular educational function at a church-related college). For a discussion of these cases, see A. Howard, State Aid to Private Higher Education 2-14(1977).
9. See New York v. Cathedral Academy, 98 S.Ct. 340(1977) (invalidating expenditure of state funds to reimburse nonpublic schools for recordkeeping and testing services required by state law); Wolman v. Walter, 97 S.Ct. 2593(1977) (invalidating expenditure of state funds for guidance counselling for elementary and secondary students in nonpublic schools, or for loan to such students or their parents of instructional materials and equipment in use in public schools, or for field trip transportation and services such as are provided to public school students); Meek v. Pittenger, 421 U.S. 349(1975) (invalidating expenditure of state funds for loan to nonpublic schools of instructional materials and equipment or for provision of auxiliary services - remedial and accelerated instruction, guidance counselling, testing, speech and hearing services - to nonpublic schools); Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756(1973) (invalidating state grants for maintenance and repair of nonpublic facilities and equipment used for elementary and secondary education in low-income urban areas, or for tuition reimbursement grants to low-income parents, and invalidating tax adjustment for middle-income parents who paid tuition to nonpublic elementary and secondary schools); Sloan v. Lemon, 413 U.S.825(1973) (invalidating state reimbursement of

parents for a portion of tuition paid to nonpublic schools); *Levitt v. Committee for Public Education and Religious Liberty*, 413 U.S. 472 (1973) (invalidating state subsidies to nonpublic schools for administering state-prepared "Regents' examinations" and teacher-prepared tests on secular subjects); *Lemon v. Kurtzman*, 403 U.S. 602 (1971) (invalidating state salary supplements to teachers of secular subjects in nonpublic schools, and state "purchase" of "secular-educational services" from nonpublic schools by directly reimbursing such schools for teachers' salaries, textbooks, and instructional materials relating to secular subjects).

10. *Walz v. Tax Commission of the City of New York*, 397 U.S. 664 (1970).
11. 403 U.S. 602 (1971)
12. 403 U.S. 672 (1971).
13. *Lemon*, 403 U.S. at 612.
14. 403 U.S. 672 (1971)
15. 413 U.S. 734 (1973).
16. 426 U.S. 736 (1976).
17. 433 F. Supp. 97 (M.D. Tenn. 1977) aff'd, 98 S.Ct. 39 (1977); see also *Smith v. Bd. of Governors of Univ. of North Carolina*, 429 F. Supp. 871 (W.D.N.C. 1977), aff'd, 98 S.Ct. 39 (1977).
18. *Lemon*, 403 U.S. at 512.
19. In cases involving higher education the Court maintains a distinction between secular educational functions and sectarian religious goals. See cases cited in note 8 *supra*. The Court disallows or ignores this distinction at the level of elementary and secondary education. See cases cited in note 9 *supra*.
20. See Editorial, "Free Choice for College Students," *America* 257 (Oct. 22, 1977).
21. See Gaffney, "Meek, Wolman, and the 'Fear of Imaginable but Totally Implausible Evils' in the Public Funding of Nonpublic Education," in *Freedom and Education: Pierce v. Society of Sisters Reexamined* (D. Kommers and M. Wahoske eds. 1978).
22. "We must also be sure that the end result - the effect - is not an excessive government entanglement with religion." *Walz v. Tax Commission*, 397 U.S. 664, 674 (1970).
23. "The questions are whether the involvement is excessive, and whether it is a continuing one calling for official and continuing surveillance leading to an impermissible degree of entanglement." *Id.* at 675.
24. *Lemon v. Kurtzman*, 403 U.S. 603, 622 (1971). See Gaffney, "Political Divisiveness Along Religious Lines: The Entanglement of the Court in Sloppy History and Bad Public Policy," 24 *St. Louis U. L.J.* 205 (1980).

25. *Tilton v. Richardson*, 403 U.S. 672, 688 (1971).
26. Rev. Ruling 71-447, 1971-2 C.B. 230.
27. *Green v. Kennedy*, 309 F. Supp. 1127 (D.D.C. 1970); *Green v. Connally*, 330 F. Supp. 1150 (D.D.C.), *aff'd. sub nom. Coit v. Green*, 404 U.S. 997 (1971); and *see Norwood v. Harrison*, 413 U.S. 455 (1973) (disallowing the application of Mississippi's textbook loan program to students attending racially discriminatory private academies).
28. 347 U.S. 483 (1954).
29. "A comprehensive, discriminating, and continuing state surveillance will inevitably be required to ensure that... the First Amendment... [is] respected." *Lemon v. Kurtzman*, 403 U.S. 60, 619 (1971).
30. Some commentators would trace the origin of this development to the now famous "footnote four" of the *Carolene Products* case, in which Chief Justice Stone wrote: "It is unnecessary to consider now whether legislation which restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny... than are most other types of legislation.... Nor need we enquire whether similar considerations enter into the review of statutes directed at particular religious... or national... or racial minorities...; whether prejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial scrutiny." *United States v. Carolene Products Co.*, 304 U.S. 144, 152-53n. 4 (1938) (citations omitted) (emphasis added).
31. See cases cited in note 9 supra.
32. *Tilton v. Richardson*, 403 U.S. 672, 681 (1971).
33. Id. at 687.
34. Contrast, e.g., the concurrence of Justice Douglas in *Lemon*, 403 U.S. at 635 ("It is well known that everything taught in most parochial schools is taught with the ultimate goal of religious education in mind") with the dissent of Justice White, *id.* at 633 ("Our prior cases have recognized the dual role of parochial schools in American society: they perform both religious and secular functions.") (emphasis added).
35. *Meek v. Pittenger*, 421 U.S. 349, 372 (1975).
36. *Wolman v. Walter*, 97 S.Ct. 2593, 2612 n.6 (1977) (Marshall, J., concurring and dissenting). Justice Marshall was referring to the contention, rejected by all members of the Court except Justice Brennan, that diagnostic personnel hired by the public school district but conducting a hearing test in a nonpublic school "may be influenced to indoctrinate the pupils with whom they deal in



the tenets of the sect that runs the sectarian school." Even the opponents of state-financed diagnostic services for children at nonpublic schools conceded that optometric services presented no "danger," presumably because of the difficulty - though not impossibility - of reducing the Bible or a catechism to the size of an eye chart.

37. Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756, 774-80 (1973).
38. Id. at 780-89; and see Sloan v. Lemon, 413 U.S. 825, 828-33 (1973).
39. Nyquist, 413 U.S. at 789-94.
40. Compare New York v. Cathedral Academy, 98 S.Ct. 340 (1977) and Levitt v. Committee for Public Education and Religious Liberty, 413 U.S. 472, 479-82 (1973), with Wolman, 97 S.Ct. at 2600-01.
41. Meek v. Pittenger, 421 U.S. at 362-66; and see Wolman, 97 S.Ct. at 2605-07.
42. Meek, 421 U.S. at 367-72; but see Wolman, 97 S.Ct. at 2601-05.
43. Wolman, 97 S.Ct. at 2608-09.
44. See, e.g., New York Tax Law §612 (Supp. 1972-1973) (accompanying notes), as cited in Nyquist, 413 U.S. at 767.
45. See McNulty, "Tax Policy and Tuition Credit Legislation: Federal Income Tax Allowances for Personal Costs of Higher Education," 61 Calif. L. Rev. 1, 14-68 (1973). The author suggests five possible purposes for a higher education tax allowance: (1) to improve the tax law's definition of taxable income (pp. 16-36), (2) to make the tax system more equitable by focusing on the differing taxpaying abilities of students and their families as compared to other taxpayers, (pp. 36-42), (3) to subsidize educational institutions, students and their families (pp. 42-57), (4) to redistribute educational services, increasing access to education to classes of people excluded from meaningful choice by virtue of economic restraints (pp. 57-64), and (5) to correct a misallocation of resources in the economy (pp. 65-68). Although Professor McNulty's article focuses on higher education, it would not require much imagination to apply his categories to precollegiate education as well.
46. 413 U.S. at 793.
47. 1 Cranch (5 U.S.) 137 (1803) (invalidating in part the Judiciary Act of 1789, 1 Stat. 81, § 13, as an unconstitutional enlargement of the original jurisdiction of the Supreme Court, fixed by Art. III, § 2).
48. Lamont v. Postmaster General, 381 U.S. 301 (1965) (invalidating a provision of the Postal Services and Federal Employees Salary Act of 1962, 76 Stat. 840, § 305, authorizing postal employees to detain and to destroy "communist political propaganda");

- United States v. Robel, 389 U.S. 258 (1967) (invalidating a provision of the Subversive Activities Control Act of 1950, 64 Stat. 992, making it unlawful for a member of a "communist front organization" to work in a defense plant); Schacht v. United States, 398 U.S. 58 (1970) (holding unconstitutional a provision of the Act of Aug. 10, 1956, 70A Stat. 35, § 772(f) permitting the wearing of U.S. military apparel in theatrical productions only if the portrayal does not tend to discredit the armed forces); Tilton v. Richardson, 403 U.S. 672 (1971) (invalidating under the No-Establishment Clause the provision of the Higher Education Facilities Act of 1963, 77 Stat. 378, which allowed for religious use of facilities constructed with federal funds after passage of 20 years); Blount v. Rizzi, 400 U.S. 410 (1971) (invalidating, for want of procedural provisions protecting freedom of expression, the Act of Aug. 16, 1950, 64 Stat. 451, authorizing the Postmaster General to close the mails to distributors of obscene materials); and Chief of Capitol Police v. Jeanette Rankin Brigade, 409 U.S. 972 (1972) (affirming a District Court order invalidating the Act of July 31, 1946, 60 Stat. 719, prohibiting parades or assemblages on U. S. Capitol grounds).
49. Pollock v. Farmers' Loan and Trust Co., 157 U.S. 429 (1895) on rehearing, 158 U.S. 601 (1895). The citation is from the oral argument.
50. See, e.g., Eisner v. Macomber, 252 U.S. 189(192) (invalidating in part a provision of the income tax law of 1916, 39 Stat. 757, § 2(a), counting stock dividends as income); Evans v. Gore, 253 U.S. 245 (1920) (invalidating in part a provision of the Revenue Act of 1918, 40 Stat. 1065, § 213, taxing the salaries of federal judges), overruled in O'Malley v. Woodrough, 307 U.S. 277 (1939); Bailey v. Drexel Furniture Co., 259 U.S. 20(1922) (invalidating the Child Labor Tax Act of 1919, 40 Stat. 1138); Carter v. Carter Coal Co., 298 U.S. 238 (1936) (invalidating the Bituminous Coal Conservation Act of 1935, 49 Stat. 991, as imposing not a tax but a penalty not sustained by the Commerce Clause).
51. Marchetti v. United States, 390 U.S. 39 (1968) and Grosso v. United States, 390 U.S. 62(1968) (invalidating provisions of Int. Rev. Code of 1954, §§ 4401-4423, 68A Stat. 525, requiring gamblers to pay occupational and excise taxes); Haynes v. United States, 390 U.S. 85(1968) (invalidating provisions of Int. Rev. Code of 1954, §§ 5041, 5051, 68A Stat. 728, requiring possessor of illegal firearms to register with the Treasury Department); Leary v. United States, 395 U.S. 6 (1969) (invalidating provisions of Marijuana Tax Act of 1954, §§ 4741, 4744, 4751, 4753, 68A Stat. 560, requiring possessors of marijuana to register and to pay a tax); and United States v. United States Coin and Currency, 401 U.S. 715 (1971) (invalidating a provision of the Int. Rev. Code of 1954, § 7302, 68A Stat. 867, providing for forfeiture of property used in violating internal revenue laws).
52. The Nyquist Court intimated as much in a footnote stating: "our decision today does not compel, as appellees have contended, the conclusion that the educational assistance provisions of the 'G.I. Bill,' 38 U.S.C. 1651, impermissibly advance religion in violation of the Establishment Clause." 413 U.S. at 782-83, n.38.

53. *Nyquist*, 413 U.S. at 793.
54. *Id.* at 794.
55. 392 U.S. 236 (1968) (upholding a New York statute authorizing the loan of secular textbooks to students attending nonpublic schools).
56. For a powerful statement of this position, see Arons, "The Separation of School and State: Pierce Reconsidered," 46 Harv. Ed. Rev. 76 (1976).
57. In *Allen*, the Court conceded that the loan of textbooks might produce some incidental benefit to sectarian institutions; "perhaps free books make it more likely that some children choose to attend a sectarian school..." 392 U.S. at . . . . But the Court upheld the program since the direct beneficiaries were the students rather than the institutions. See also *Nyquist*, 413 U.S. at 800 (Burger, C. J., concurring and dissenting); and see *Meek*, 421 U.S. at 359-62, and *Wolman* 97 S.Ct. at 2599-2600.
58. Compare *Allen*: "... this Court has long recognized that religious schools pursue two goals, religious instruction and secular education," 392 U.S. at 245, with *Nyquist*: "... sectarian schools perform secular educational functions as well as religious functions, and ... some forms of aid may be channeled to the secular without providing direct aid to the sectarian. But the channel is a narrow one...." 413 U.S. at 775.
59. "The church-related elementary and secondary schools that are the primary beneficiaries of [the Pennsylvania statute] ... typify ... religion-pervasive institutions. The very purpose of many of these schools is to provide an integrated secular and religious education.... Substantial aid to the educational function of such schools, accordingly, necessarily results in aid to the sectarian school enterprise as a whole." 421 U.S. at 366, and at 379-81 (Brennan, J., concurring and dissenting); see also *Lemon*, 403 U.S. at 657 (Brennan, J., concurring).
60. See, e.g., *Wolman*, 97 S.Ct. at 2601-03.
61. See, e.g., *Lemon*, 403 U.S. at 635 (Douglas, J., concurring).
62. See, e.g., the address of Sen. Moynihan at LeMoyne College, May 14, 1977. "The Court asks itself an empirical question. What is "the primary effect" of this Act? It then gives an a priori answer: The primary effect is to advance religion "because of the pre-dominantly religious character of the schools benefiting from the Act." That is not a proof. It is an assertion. Where are the facts that support the assertion?" 123 Cong. Rec. S8054 (daily ed. May 19, 1977).
63. For a sociological study of Catholic parochial schools, see A. Greeley, "Catholic High Schools and Minority Students," in E. Gaffney, ed., Private Schools and the Public Good: Policy Alternatives for the Eighties 6-17 (1981); see A. Greeley and P. Rossi, The Education of Catholic Americans (1966); A. Greeley, W. McCready, and K. McCourt, Catholic Schools in a Declining Church (1976). For a recent report on the financial

pressures on nonpublic education, see President's Commission on School Finance, Schools, People, and Money: The Need for Educational Reform (1972). Regretably no similar study has been done on the acute financial crises affecting many of the public school systems in decaying urban areas with a low property tax base. Such a study should investigate the quality of public education in the wake of cases like San Antonio School District v. Rodriguez, 411 U.S. 1 (1973) which allows inequitable distribution of educational resources, and Milliken v. Bradley, 418 U.S. 717 (1974), which set aside an order requiring the adoption of a metropolitan area-wide plan for desegregating the schools of the city of Detroit and 53 adjacent suburban school districts. Such a study might fruitfully compare the performance of the public school systems and their nonpublic counterparts. See, e.g., Hoyt, "Learning a Lesson from the Catholic Schools," New York Magazine 48 (Sept. 12, 1977).

64. See, e.g., the arguments forcefully presented by Stephen Arons in the article cited in note 56 supra.
65. See, e.g., 123 Cong. Rec. S15628 (remarks of Sen. Moynihan, daily ed. Sept. 26, 1977). In addition to the classical sources cited by Sen. Moynihan (Storey, Seward, Spencer, Kent, Cooley, and Corwin), see J. Constanzo, This Nation Under God: Church, State and Schools in America (1964); P. Kauper, Religion and the Constitution (1964); M. Howe, The Garden and the Wilderness: Religion and Government in American Constitutional History (1965); R. Morgan, The Supreme Court and Religion (1972); F. Sorauf, The Wall of Separation: The Constitutional Politics of Church and State (1976); and W. Berns, The First Amendment and the Future of American Democracy (1977).
66. Lemon, 403 U.S. at 619.
67. See Walz, 397 U.S. at 674 (1970).
68. Meek, 421 U.S. at 385 (Burger, C. J., concurring and dissenting).
69. Id. at 385-86.
70. Id. at 386.
71. See, e.g., Lemon, 403 U.S. at 625; Meek, 421 U.S. at 372; and Wolman, 97 S.Ct. at 2610 (Brennan, Jr., concurring and dissenting).
72. For a systematic treatment of this theme, see L. Tribe, American Constitutional Law, 576-736 (1978), and T. Emerson, The System of Freedom of Expression (1970).
73. For an early articulation of this value, see Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518, 634-35 (1819); for a contemporary restatement of the theme, see the article by Stephen Arons cited in note 56 supra (relying chiefly on Pierce v. Society of Sisters, 268 U.S. 510 (1925) and the symposium cited in note 21 supra. See also Meyer v. Nebraska, 262 U.S. 390 (1923).

74. A. Meiklejohn, Political Freedom (1960).
75. Meiklejohn, "The First Amendment Is an Absolute," 1961 S.Ct. Rev. 245, 254 (emphasis supplied).
76. *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964); see Brennan, "The Supreme Court and the Meiklejohn Interpretation of the First Amendment," 79 *Harv. L. Rev.* 1 (1965), and Kalven, "Uninhibited, Robust and Wide-Open - A Note on Free Speech and the Warren Court," 67 *Mich. L. Rev.* 289 (1968)
77. 347 U.S. 483 (1954).
78. *Id.* at 493 (emphasis added).
79. T. Emerson, Toward a General Theory of the First Amendment 3 (1966).
80. *Id.* at 4.
81. Walz, 397 U.S. at 669.
82. *Nyquist*, 413 U.S. at 802 (Burger, C. J., concurring and dissenting).
83. *Ibid.*
84. *Id.* at 814 (White, J., dissenting).
85. *Id.* at 788-89.
86. L. Tribe, American Constitutional Law 833 (1978); for a systematic attempt to reconcile the two religion clauses, see at pp. 819-34.
87. *Id.* at 833.
88. 268 U.S. 510 (1925).
89. 406 U.S. 205 (1972).
90. 411 U.S. 1 (1973); but see *Serrano v. Priest*, 5 Cal. 3d 597, 487 P. 2d 1241 (1971).
91. *Beal v. Doe*, 97 S.Ct. 2366 (1977) and *Maher v. Roe*, 97 S.Ct. 2376 (1977); see also *Poelker v. Doe*, 97 S.Ct. 2391 (1977).
92. 413 U.S. 825, 834 (1973).
93. *Norwood v. Harrison*, 413 U.S. 455, 462 (1973).
94. See, e.g., Arons, note 56 *supra*; and Tribe, note 72 *supra* at 1129-36.
95. See generally J. Rawls, A Theory of Justice 258-332 (1971).
96. *Nyquist*, 413 U.S. at 803 (Burger, C. J., concurring and dissenting) (emphasis added).

97. 5 U.S. (1 Cr.) 137,177 (1803).
98. 25 U.S. (12 Wheat.) 213, 270 (1827); see also Fletcher v. Peck 10 U.S. (6 Cr.) 87, 128 (1810).
99. By contrast, it should be noted that in the Wolman case, the most successful recent attempt of a state legislature to provide financial assistance to students attending nonpublic parochial schools, it was stipulated that none of the schools attended by the students benefited by the legislation maintained a policy of racial discrimination in the admission of pupils or in the hiring of teachers. 97 S.Ct. at 2598.
100. 347 U.S. 483 (1954).
101. For a collection of school desegregation cases decided after Brown, see G. Gunther, Constitutional Law: Cases and Materials 716-44 (9th ed. 1975) and the current supplement to this volume at pp. 70-81.
102. President's Commission on School Finance, Schools, People and Money: The Need for Educational Reform (1972); see also President's Panel on Nonpublic Education, Nonpublic Education and the Public Good (1972).
103. For a forceful articulation of this theme and a presentation of the view that the decisions of the Supreme Court in this area of the law are "in a state of utter chaos and unpredictable change," see A. Scalia, "On Making It look Easy by Doing It Wrong: A Critical View of the Justice Department," in E. Gaffney, ed., Private Schools and the Public Good, note 63 supra, pp. 173-85. In the most recent Establishment Clause Case dealing with public funding of nonpublic education, Justice White wrote: "Establishment Clause cases are not easy, they stir deep feelings, and we are divided among ourselves, perhaps reflecting the different views on this subject of the people of this country. What is certain is that our decisions have tended to avoid categorical imperatives and absolutist approaches at either end of the range of possible outcomes. This course sacrifices clarity and predictability for flexibility, but this promises to be the case until the continuing interaction between the courts and states produces a single, more-encompassing construction of the Establishment Clause." Committee for Public Education and Religious Liberty, v. Regan, 444 U.S. 646, 662 (1980).

Statement of William E. Laird, Department of Economics  
Florida State University on S.550

Recent decades have seen a long term decline in competition in the field of education at all levels. Public schools have achieved something rather close to monopoly now with over ninety percent of elementary and secondary students enrolled in public schools. The progressive rise in public school enrollments vis-a-vis private school enrollment has diminished competition in education and has been accompanied by increasing criticism of the public schools. There is concern about the quality of education produced and the lack of discipline in the classroom. There is violence and fear of violence in too many schools, both in the classroom and on the grounds. Test scores have declined. Many parents feel they have lost all control over the education their children receive while other believe the schools try to accomplish ends for which they are not well suited. Some feel the quality of leadership in many city school boards has declined sharply in recent years. Even staunch defenders of the ideals of public education admit that things are not going as well as they should in these schools. Things have been getting worse rather than better.

There is certainly more than one way to diagnose these complex problems and obviously alternative ways to attempt to improve the situation. The tuition tax credit approach of S.550 is one that holds promise because it will provide a new set of incentives to both the public and the private schools while widening the choice of consumers and encouraging the flow of private capital into education. Tuition tax credits will accomplish these things in a rather direct and simple fashion, without creating a new agency.

What will be created is a new competitive force in an area where public policy has, sometimes deliberately, sometimes inadvertently, reduced competition.

Tuition tax credits provide one means of encouraging competition in education. By providing a partial offset to the tuition costs of private schools tax credits will broaden the range of choice many parents now face in educating their children. At present only those who can afford public school taxes plus the full cost of private tuition have the option of private school. They pay twice and this naturally limits the parents choice while it handicaps private schools. The arrangement also lessens the pressure for performance by the public schools.

The public interest requires quality education, but certainly does not require that public schools progressively monopolize education. On the contrary, monopolization in this area can be expected to have many of same effects that monopoly ordinarily has in other areas. The interests of consumers are neglected, cost are higher than need be and operations become bureaucratic. Some would argue that these effects are already evident in many public schools. The public interest is served by monopoly only in the case of natural monopoly -where competition is not feasible because of the technology of production. Education is not a natural monopoly. On the contrary, competition is entirely feasible in education at all levels.

Some will fear that tuition tax credits will destroy or greatly damage the public school system. Certainly many of those with a vested interest in the public schools will be alarmed at the possibility of tax credits becoming a reality. This alarm should not be taken too seriously.

There is very little chance of these fears of the public schools being greatly ~~damaged~~<sup>devalued</sup> coming true. The worst will not happen because the public



schools should be as capable of responding constructively to new competitive developments as other segments of the society. Tax credits should strengthen the private schools and allow some growth in this area. They will enable some parents to exercise a choice they do not have at present. It should be anticipated that the public school establishment will respond to this development. The opportunity of freer movement of children between public and private schools will provide the most direct form of incentives to local school boards and school officials. The movement of a relatively few students will quickly gain their attention. This movement is a challenge they would much prefer not to face and that is understandable. Nonetheless, such competition and potential competition would almost surely have a positive effect on the motivation of those with a vested interest in public schools. The public schools certainly would survive the advent of tuition tax credits. However, some of the attitudes of the public school establishment may not survive the more competitive educational world that would be fostered by tax credits. A change in the perspective of the public school establishment could be one of the more important benefits of the plan at the elementary and secondary level. The long run effects could be quite positive. This is one reason for believing that tuition tax credits ultimately would strengthen public as well as private schools.

The points raised thus far primarily concern elementary and secondary education. While other points could be raised regarding these levels of instruction, I would like to turn now to higher education.

Tuition tax credits for higher education will open choices to students that relatively few can enjoy at present. One of my concerns is that in so many states the public universities are all so similar. They tend to be rather

large, often impersonal institutions, and of course, they differ in quality. Undergraduate education oftentimes receives a low priority at these institutions, despite official protestations to the contrary. The fact is that not all students do their best in such an environment. Obviously there is not one academic environment which is best for everyone. Personalities and interests differ and some are better suited to smaller four year colleges than to large universities. This is not so much a reflection on the typical state university as it is an admission of inevitable individual differences in temperament, ability, background and interests. Some would benefit from living in another region of the country, just as others would benefit from small classes rather than large lectures and many would prefer more experienced professors to graduate student instructors, although many of them are excellent. Some need more contact with professors than do others. Tax credits would provide a better opportunity for students to select the type of institution best suited for them.

Under present institutional arrangements in the financing of higher education it is difficult if not impossible for many students to spend only a few extra dollars to attend a school they (or their parents) consider better suited for their needs. Some can, of course, if the preferred school is another state institution within their home state. If the preferred school is a smaller private school some will not have the option they desire.

The point goes beyond the fact that some have their options limited by the existing financing systems. Higher education is deprived of the additional resources individuals would be willing to devote to obtain the education and environment they prefer. Tuition tax credits would provide choices for a much broader range of students and increase, to a degree, the flow of private resources devoted to higher education.

EDUCATIONAL TAX CREDITS

Dr. Roger Freeman

from THE PUBLIC SCHOOL MONOPOLY: EDUCATION AND THE STATE IN AMERICA

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Efforts to provide tax relief for parents who bear the burden of paying for their children's education have been active for about a quarter-century. They were and still are the subject of intense controversies in Congress, in state legislatures, in the courts, in the nation's press, and among the general public. Both houses of Congress and several state legislatures have passed tuition tax credit bills at some time or other, but judicial and other obstacles have intervened and prevented the plans from being carried out.

The core of the argument for financial relief is really not over money but over the role of nonpublic education, which, if aided, might expand and could threaten the near-monopoly position of the public schools. The basic question was and is whether all, or almost all, children should receive their education in government-run common schools or whether there should be diversity of offerings, giving parents a choice in the type of education they wish their children to receive and in the school they want them to attend. Although that choice exists in law, its exercise is severely restricted by the economics of the situation, by the penalty which parents have to bear who enroll their children in a nonpublic school. Finances make parental option largely hypothetical for the vast majority of families which cannot afford to pay the added expenses. As if the economic and ideological (public versus private schools) problems were not enough, the subject is further complicated by a constitutional question: most of the nonpublic schools are

religiously affiliated, most of them connected with the Catholic Church. That brings strong emotions to the surface which divide positions on the constitutional issue and make both sides uncompromising. The religious issue has proven the rock on which past attempts to authorize tax credits have foundered.

The idea of educational tax credits, however, gained ground and became widely popular in the 1970s, and supporters grew increasingly confident that their drive would soon be crowned by success. Opponents are no less determined to keep educational tax credits from becoming a reality. The stage seems now set for fierce battles in the political and judicial arenas during the 1980s. Their outcome may decide the fate of educational tax credits, and of nonpublic education, for a long time to come.

With a national administration and a congress significantly more favorable toward educational tax credits than any of their predecessors and with some of the top political leaders explicitly committed, prospects for approval appear to be better than they have ever been. The timing of personnel changes on the Supreme Court, a narrow majority of which has been the most formidable obstacle to educational tax credits, though the ingenuity, dedication, and strength of their opponents must not be underrated.

### Issues and Trends

Dissatisfaction with the educational results of the public schools has been growing for decades and reached new heights in the late 1970s, with no sign of a trend reversal. The schools

are charged with failing to establish and uphold sufficiently high standards of behavior and curriculum. Untold numbers of parents have become increasingly irritated, perturbed, and alienated because they feel that schools do not teach and enforce the discipline which young people need to advance in life, that they do not transmit to students the skills and knowledge which they are able to absorb, and last but not least, that they do not inspire pupils to acquire the proper attitudes without which their chances of becoming useful members of society are limited. When communities have tried to influence and change the direction of their schools, they have run up against a central bureaucracy federal, state, and local which has control of contents, methods, and pursued goals, often at variance with the local consensus. Frustrated in their efforts to improve their children's education in public schools, many parents searched for alternatives and found that nonpublic schools were their only available option.

Although the demand for nonpublic education has been expanding, the supply has been shrinking. Nonpublic schools found themselves increasingly unable to finance the gap between soaring costs and what they felt they could charge their patrons without becoming institutions solely for children of the rich. Some private schools resolved the dilemma by raising tuitions to whatever level their outlays called for and by trying to attract donations. The majority of systems reluctantly decided to close schools which ran intolerably high deficits and to restrict admission at most others. Nonpublic schools lost about one-third of their students between 1965 and 1980, not because they lacked applicants--they continued to be swamped--but because they could

not afford to admit them. The nonpublic share of total elementary and secondary school enrollment shrank from nearly 15 percent in 1965 to 10 percent in 1980.<sup>1</sup>

Costs climbed steeply in public and nonpublic schools, much faster than the general price level. State and local governments supplied the required funds to the public schools by jacking up the rates of property, income, and sales taxes and were helped by small amounts of federal aid. The percentage of national income devoted to public education substantially more than doubled within the past two decades. With personnel accounting for close to three-fourths of total school expenditures, teachers are the main item of school costs. Most of the soaring school outlays can be traced to a shrinking teacher-pupil ratio (fewer pupils per teacher) and to rising teacher salaries. This is true in public as well as in nonpublic schools.

But nonpublic schools have special problems. Catholic schools, whose share of nonpublic education dropped from more than four-fifths to slightly over two-thirds within the past fifteen years, used to rely almost completely on members of religious orders to staff their faculty. Those teachers served for mere subsistence compensation. But the number of young people choosing religious vocations has been falling precipitously in recent decades, and Catholic schools have had to hire more lay teachers. Lay teachers accounted for 36 percent of the faculty in Catholic schools in 1965, for 70 percent in 1978. Lay teachers must be paid regular wages, usually less than public school teachers' salaries but far more than what members of religious orders were and are paid.

Catholic parochial schools used to run far larger classes than public schools, up to fifty pupils and more, in an effort to accommodate the largest possible number of children. This has been remedied. The teacher-pupil ratio in Catholic schools dropped from one to thirty-two in 1965 to one to twenty-two in 1978 (compared with one to eighteen in public schools). This means that a student body of constant size used 45 percent more teachers in 1978 than it did thirteen years earlier. The larger number of teachers required for a specified number of students and higher compensation because of the shift from religious to lay teachers forced the Catholic school systems to close 3,500 schools (a loss of 27 percent) between 1965 and 1978 and to reduce their student body by more than two million (a loss of 40 percent).

Secular nonpublic schools and schools affiliated with denominations other than Catholic--Lutheran, Baptist, Episcopal, Jewish, etc.--doubled enrollment between 1965 and 1976 and now account for close to one-third of nonpublic school enrollment. They could have grown even faster if they had been able to finance such an expansion. Current expenditures in public schools totaled \$1,900 per pupil in 1978-79 and may be estimated to run above \$2,200 in 1981. Very few nonpublic schools are able to charge their patrons that much or more. Most set their tuitions at between one-half and one-fourth of the cost of public schools, or lower, and thus find it extremely difficult to make ends meet. Most parents, however, particularly those with several children of school age, find it impossible to pay tuitions between \$500 and \$1,500 or more per child and avoid



those expenses by sending their offspring to public school. They know that they pay for public school education in their state and local property taxes and income and sales taxes and feel that they cannot afford to pay twice for their children's education.

It is now generally recognized that thousands of additional parents would send their children to nonpublic schools if the penalty for doing so were not so heavy.<sup>2</sup> The number of parents wanting to transfer their children has undoubtedly risen in recent decades, whereas the number of children actually attending nonpublic school declined. Thus, the idea of governmental subventions of nonpublic schools gained increasing support. Each child attending a nonpublic school now saves the taxpayers an average of at least \$2,200 for current annual expenses, not counting the cost of facilities. With about five million pupils in nonpublic schools, this equals a savings for taxpayers of \$11 billion a year. With enrollment now shifting to public schools, that amount is likely to shrink. If part of the tax savings were used to subsidize nonpublic schools, more parents might be enabled to send their children there and taxpayers would still derive sizable benefits from the fact that millions of parents pay a substantial share of the cost of educating their offspring. In other words, a small subsidy to nonpublic schools could produce sizable reductions in the cost of public school education, with a resulting net gain to the taxpayer.

But direct governmental subsidies to nonpublic schools face obstacles which currently appear insuperable. Many nonpublic school systems do not want to become recipients of regular governmental appropriations because they know that this would

subject them to governmental controls. Experience in recent decades has shown that beneficiaries of federal funds, as well as of state funds, thereby virtually lose the right to make their own policy decisions. In the end, there might be little difference between public and nonpublic schools.

Some of the nonpublic schools, those financially hard-pressed and facing possible closing, might be willing to surrender some of their independence in return for cash. But spokesmen for the public schools strongly oppose any aid to other school systems which would, in their opinion, encourage and aid unfair competition and lead to a gradual decline of public schools. They believe that all children should attend the common schools as a means of educating them as citizens in a democratic society where they must mix, deal, and get along with members of all other social and economic classes, ethnic groups, etc. Although attempts to make attendance in public schools compulsory for all children were turned down by the Supreme Court more than half a century ago and there is little chance that the issue will be raised again, public school forces demand that, at the least, nonpublic schools not be aided and abetted, that the economic penalty be kept so high that not many parents will be able or willing to pay it.

What has proven an insuperable obstacle to direct subvention is the fact that 85 percent of nonpublic schools, enrolling nearly 90 percent of students, are religiously identified or affiliated. The Supreme Court declared in 1947 that the nonestablishment clause of the First Amendment to the Constitution forbids spending of public funds for purposes that

would advance religion and that attendance at church-affiliated schools would be so regarded.<sup>3</sup> Nevertheless, when several state legislatures enacted programs providing funds for nonpublic schools, the courts held most of those laws to be unconstitutional.

Attention then shifted to indirect forms of aid, such as financial assistance to students, vouchers, or tax credits. Federal or state grants and loans to students were held constitutional in higher education, not in elementary and secondary schools. Tax credits for enrollment in nonpublic elementary schools were enacted by several states but held unconstitutional by the Supreme Court. Several plans were developed which would have the federal government--or state governments--give parents of school-age children vouchers, which they could at their discretion use in public or private schools to pay all or part of the tuition. This would make public schools more dependent on vouchers than on appropriations. A voucher plan could establish closer economic equality between public and nonpublic schools, thus making the decision on whether to enroll in one or the other independent of, or at least less dependent on, financial factors. The choice of school would then be governed mainly or exclusively by parental preference for the standards, curriculum, or methods of the particular school, not its cost. Another plan would provide vouchers only for children in nonpublic schools, leaving the support of public schools unchanged.

Voucher plans have gained broader support but have so far not been able to gain acceptance by any state legislature nor been seriously considered by Congress. Moreover, a Supreme Court

which declared tax credits to be unconstitutional is unlikely to view vouchers in a more favorable light. Vouchers would result in direct governmental payments, federal or state, to a school--whereas tax credits would mean only a reduction of the tax liability of individuals and not involve the expenditure of tax-raised funds, or any contact between government and the school. This suggests that vouchers may have a lower chance of passing court scrutiny than tax credits. The constitutional questions involved have become highly complex and call for close analysis. Were it not for the constitutional problem, tax credits would have been established years ago. As it is, constitutionality is the crucial consideration on which the future of tax credits depends.

#### Are Educational Tax Credits Unconstitutional?

In nearly fifty cases over the past three decades, the Supreme Court has been trying to interpret and apply the opening clause of the First Amendment. Most of the decisions were adopted with the narrowest of margins, and some of the decisions of the Court's majority were accompanied by up to four dissents in addition to one or several separate opinions. This enormous effort at interpretation by shifting majorities leaves some of the basic issues as complex, as unresolved, and as controversial as ever. This is why conflicts continue while state legislatures and the Congress search for solutions to urgent problems, which, hopefully, can pass the Court's scrutiny.

#### The Confusion of Major Court Cases

The governing constitutional clause is, in the words of Senator Daniel Moynihan, a leader in the fight for tax credits,

"simplicity itself": "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."<sup>4</sup> At the time this was written, its meaning appeared clear beyond a doubt. Most of the states, while they were still British colonies, had established churches, as had virtually all European countries. Most of the churches established by the thirteen colonies were Anglican, Dutch-Reformed, or Congregational. The state's representatives, in drafting and approving the Bill of Rights, wanted to foreclose any possibility that the Congress might at some time want to establish a church of its own. Hence the nonestablishment clause, which caused little trouble for more than a century and a half.

In 1947, in Everson v. Board of Education, the Court, with a majority of five to four (which then became the rule more than an exception in this type of cases), declared:

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. . . . No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. . . ."<sup>5</sup>

That the proceeds of taxes should not be used to "teach or practice religion" expressed then as it does now, the belief in separation of church and state of an overwhelming majority of the American people. Did the decision forbid all types of action that might benefit religious denominations? In the Everson case the Court approved the expenditure of tax-raised funds to pay for the transportation of children to parochial schools on the theory

that the outlay "was for a public purpose." The operation of church-affiliated elementary and secondary schools serves the public purpose of providing the education which nearly all state constitutions require children to receive, commonly between ages six and sixteen or eighteen. That those schools also teach religion does not mean that all or a majority of their activities serve to "practice religion." Most of their curriculum focuses on instructing children in the same basic skills and knowledge which public schools teach their students. The primary purposes of the school to which most of its own and the teachers' and students' time are devoted and to which most of the expenditures are allocated are secular.

It cannot be denied that the operation of denominational schools helps to advance religion and that it is so intended by their sponsors. That does not seem to run counter to the concept of the court which in Everson authorized paying for the cost of transporting children to parochial schools. Speaking through Justice William O. Douglas, the Court stated in Zorach v. Clauson: "we are a religious people whose institutions presuppose a Supreme Being. . . . When the state encourages religious instruction. . . it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. . . ."6

The Court subsequently approved a few other incidental benefits for children attending church-connected schools but otherwise voided all state statutes which would have allocated

sums for the general purposes of such schools. Legislative attempts in Pennsylvania and Rhode Island to earmark state funds for the secular activities of benefited schools were given short shrift by the Supreme Court in Lemon v. Kurtzman and Earley v. DiCenso. It declared the parochial school system to be "an integral part of the religious mission of the Catholic Church."<sup>7</sup> The Court established a three-part requirement for the allocation of governmental funds.

They must have (1) a secular purpose, (2) a primary effect other than the advancement of religion, and (3) no tendency to entangle the state excessively in church affairs. It can hardly be denied that church-affiliated elementary and secondary schools serve a secular purpose by providing a general education for millions of children. To avoid assisting a primary effect of advancing religion, the state would have to ban the schools' use of state funds for religious purposes; that is exactly what Pennsylvania and Rhode Island did. But to enforce this, the Court declared, would "require continuing state surveillance to ensure that the statutory restrictions are obeyed. . . . Historically, governmental control and surveillance measures tend to follow cash grant programs, and here the government's post-audit power to inspect financial records of church-related schools creates an intimate and continuing relationship between church and state."<sup>8</sup> The Court was, in effect, telling the states: if you appropriate unrestricted funds to church-affiliated schools, you are helping to advance religion, which is impermissible under the Constitution. If you restrict

the funds to secular purposes, then you cause an excessive church-state entanglement, which also is unconstitutional. You might as well quit trying to give money to denominational schools because you can't win. We'll stop you coming or going. It's a case of heads I win, tails you lose.

But some states did not give up on trying to help nonpublic schools. If state funds could not be allocated to church-affiliated schools directly, the goal of aiding them could be approached indirectly through tax abatements. One year prior to Lemon v. Kurtzman the Supreme Court approved--more precisely reaffirmed--the tax exemption of churches. Speaking through the Chief Justice, the Court ruled in Walz v. Tax Commission with Justice Douglas a lonely dissenter:

The legislative purpose of tax exemptions is not aimed at establishing, sponsoring, or supporting religion, and New York's legislation simply spares the exercise of religion from the burden of property taxation imposed on private profit institutions.

The tax exemption creates only a minimal and remote involvement between church and state, far less than taxation of churches would entail, and it restricts the fiscal relationship between them, thus tending to complement and reinforce the desired separation insulating each from the other.<sup>9</sup>

In Walz the Court traced the no-establishment clause to the fact that at the time of the adoption of the First Amendment there existed an established church in England and in the colonies and that in other countries "establishment meant sponsorship by the sovereign." Trying to explain the zigzagging in its interpretation of the no-establishment clause, the Court said:



The considerable internal inconsistency in the opinions of the court derives from what, in retrospect, may have been too sweeping utterances on aspects of these clauses that seemed clear in relation to the particular cases but have limited meaning as general principles. . . .

The general principle deducible from the First Amendment and all that has been said by the Court is this: that we will not tolerate either governmentally established religion or governmental interference with religion. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference.

Each value judgment under the Religion Clauses must therefore turn on whether particular acts in question are intended to establish or interfere with religious beliefs and practices or have the effect of doing so. . . .

The grant of a tax exemption is not sponsorship since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the state.<sup>10</sup>

That seemed, at the time, to answer negatively the question whether tax exemptions for religious purposes violate the no-establishment clause of the First Amendment. The fact that churches undoubtedly and primarily "advance religion" and do not serve a primary secular purpose does not make tax concessions to them unconstitutional. The Court called church-state involvement resulting from tax abatement minimal and remote.

The door to aiding church-affiliated schools through tax abatement appeared to be wide open--until the Court three years later slammed it shut in Committee for Public Education v. Niquist. The case arose from a 1972 New York state law which authorized three programs intended to aid nonpublic school education. Two of the programs involved direct money payments; the third, tax relief for parents with children in nonpublic schools. A three-judge federal court voided the first two programs and upheld the third.

But the Supreme Court in a six-to-three decision, speaking through Justice Lewis F. Powell, declared: "The system of providing income tax benefits to parents of children attending New York's nonpublic schools . . . is not sufficiently restricted to assure that it will not have the impermissible effect of advancing the sectarian activities of religious schools." To disabuse state authorities of the idea that they could correct the fault by inserting requisite restrictions, the Court warned them that such action "carries grave potential for entanglement in the broader sense of continuing and expanding political strife over aid to religion." If nonpublic school aid did not founder on the rocks of Scylla (aid to religion), it would surely be sunk when it hit Charybdis (church-state entanglement). In Niquist, the court de facto accepted Justice Douglas' dictum--in his Walz dissent that "tax exemption is a subsidy." It stated that "in practical terms there would be little difference. . . . The only difference is that one parent receives an actual cash payment while the other is allowed to reduce by an arbitrary amount the sum he would otherwise be obliged to pay over to the state."<sup>11</sup>

The thesis that there is virtually no difference between tax abatement and cash payments parallels action by Congress in the 1974 Budget Reform Act which provides that the annual budget list the revenue effects of selected tax exclusions, exemptions, deductions, credits, etc., under the heading "Tax Expenditures." If partial or total relief from taxation is legally equivalent to the spending of tax-raised funds, no tax concession can be allowed which is not clearly restricted to secular purposes and could be used to advance religion.

How then can churches--and schools sponsored by them--be exempted from paying property taxes and other taxes which everyone else must pay? How can contributions to churches and church-affiliated schools be allowed as deductions for income tax purposes? In Walz the Court in unequivocal terms upheld the tax exemption of churches. It never adjudicated the deductibility of charitable contributions to churches<sup>12</sup> because that deduction has never been questioned ever since its adoption in 1917. In Niquist the court indicated in an oblique way that its negative decision on tax abatement for parents of children in religious schools should not be interpreted as questioning the constitutional status of tax deductions for charitable (religious) purposes ("we do not have before us and do not decide, whether that form of tax benefit is constitutionally acceptable").<sup>13</sup> The Court left the implication, though it did not say so explicitly, that such deductions are constitutional.

Can anybody argue that tax exemptions and donations to churches and to schools affiliated with them do not advance religion but that tuition payments to those same schools do? Is there any special quality to money paid for tuitions that makes it different--and more apt to promote religion--than money paid in the form of a donation? What makes the latter constitutional and the former unconstitutional? Why did the Court in Walz with near-unanimity approve church tax exemptions and Niquist take pains to dispel any doubt that decision could have raised about tax deductibility of contributions to religious institutions?

### The Politics of Court Decisions

It has been said that the Court--or at least, some of its members--sometimes hold a wet finger in the wind before proclaiming the latest version of "ultimate wisdom." The Court knew that a decision declaring the tax exemption of churches or the tax deductibility of contributions to them unconstitutional would generate a national uproar, which, in short order, would sweep away that decision. To overrule such a verdict would not, as did Dred Scott, require a civil war; it would be done expeditiously by constitutional amendment. Such an outcome was, of course, the last thing the Court's majority wanted. To void the tax benefits under review in Niquist, while upholding church tax exemptions and tax deductibility of donations to them, it resorted to a twisted logic and contorted phrasing which the judges dissenting with the decision acidly criticized as running contrary to settled doctrine and to the words and spirit of a long list of Court decisions.<sup>14</sup>

The utter confusion created by Niquist was highlighted in Wolman v. Walter when seven of the nine justices disagreed with parts of the decision and agreed with other parts of it. It resembled a judicial lottery more than a judgment by the highest court in the land. Justice Powell remarked in his part-dissent: "Our decisions in this troubling area draw lines that often must seem arbitrary."<sup>15</sup> To others they appear worse than arbitrary: illogical, inconsistent, making a mockery of "equal justice under the law."

The above mentioned case of Wolman v. Walter offers an illustration. A three-judge federal court upheld an Ohio law authorizing the purchase of secular textbooks, instructional materials, and auxiliary equipment (called "book substitutes" in the statute) for loans to students of nonpublic (including sectarian) schools. It was the judgment of the Supreme Court that loans of textbooks are constitutional but that loans of other instructional materials violate the Constitution.

The Supreme Court reaffirmed Niquist in Byrne v. Public Funds.<sup>16</sup> When New Jersey imposed a state income tax in 1976, it allowed parents of children in an elementary-secondary school "not deriving its primary support from public moneys" a \$1,000 deduction for tax purposes. That, the Court ruled, was not neutral because parents of children in public school were given no such deduction. An appeals court judge, in a concurring opinion--bowing to Niquist--remarked:

I have great difficulty, however, in understanding why the exclusion here is more of an aid to religion than a direct contribution to a church, synagogue, temple or mosque which is deductible under the Internal Revenue Code. . . . The State's financial burden is lessened whenever parents send their child to a nonpublic school. There is, therefore, more justification for permitting the school tax deduction than the charitable deduction, at least from the standpoint of advancing governmental interest.<sup>17</sup>

It is significant that neither Niquist nor Byrne voided a tax benefit for paying tuition to a sectarian school. The New York and New Jersey statutes had granted a deduction for enrollment at a nonpublic school, not for paying tuition to it. Deductibility of tuition has yet to be resolved and may be decided when an act

of Congress allowing a deduction or credit for tuition payments reaches the Supreme Court. In his dissent with the Court's decision in Meek v. Pittinger, which paralleled Niquist, the Chief Justice wrote:

One can only hope that, at some future date, the Court will come to a more enlightened and tolerant view of the First Amendment's guarantee of free exercise of religion, thus eliminating the denial of equal protection to children in church-sponsored schools, and take a more realistic view that carefully limited aid to children is not a step toward establishing a state religion. . . .<sup>18</sup>

Why did the Court deny the tax benefits which the New York and New Jersey laws intended to confer while upholding similar, far broader tax abatements aiding religious institutions? Deductibility of church contributions and the tax exemption of churches affect a majority of American taxpayers whereas tuitions at nonpublic schools are of major and direct concern only to a minority. Some minorities seem to fare better at the hands of the Supreme Court than others. The Niquist decision referred to the "narrowness of the benefited class." The meaning of the term "narrowness" may be clarified by comparing the role of governmental aid at the elementary-secondary level with conditions in higher education.

#### A Constitutional Difference Between Higher Education and the Lower Schools

Several large programs of grants and loans to students have long been in operation at public as well as at church-connected colleges and universities, but not at the precollege level. In

Tilton v. Richardson, the Supreme Court upheld the constitutionality of construction grants to church-affiliated institutions.<sup>19</sup> But in Niquist it voided grants for the maintenance and repair of dilapidated buildings of parochial elementary and secondary schools. The Senate six times passed tax credit bills for tuitions paid to institutions of higher learning but balked at bestowing similar benefits for attendance at the subcollegiate level. We may wonder what the constitutional difference is between elementary-secondary education and higher education in a country whose Constitution does not even mention the word "education."

In Lemon v. Kurtzman the Court referred to "the impressionable age of the pupils" which make parochial schools "a powerful vehicle for transmitting the Catholic faith to the next generation."<sup>20</sup> No evidence was presented that impressionability disappears or sharply diminishes at eighteen and that reaching that magic age arms students with nonimpressionability. But the cited remark brings another consideration to the foreground. A majority of the religiously identified colleges are affiliated with Protestant denominations; well over two-thirds of the denominational lower schools are connected with the Catholic Church. Because this is a delicate subject, judicial references to the fact that most of the benefits in the lower schools would redound to Catholics have generally been couched in careful phraseology. But they state a known and undeniable fact. That, of course, is not to say that anti-Catholic sentiment is the major motivating factor of opposition to educational tax credits. Most opponents are acting

from a concern that any encouragement or type of aid to nonpublic schools would harm the public schools in whose advancement they have a strong ideological interest and/or material stake. Expansion of nonpublic schools--as a result of governmental aid--could not only diminish public enrollment but undermine the dominant position and importance of the public school system in American education.

We then must conclude that some of the opposition to tax credits is directed less against the growth of nonpublic schools generally as against Catholic schools or, more precisely, against aiding the Catholic Church. It was no coincidence that when a tuition tax credit bill was pending in the Ninety-fifth Congress, the two leaders in the Senate debate on an amendment to exclude elementary and secondary schools represented Bible Belt constituencies. Nor was it an accident that in the critical roll call on August 15, 1978, virtually all senators from that region--with but few exceptions such as the senators from Louisiana which has a large Catholic population--voted to allow tax credits only in higher education. House votes showed a similar picture.<sup>21</sup>

In summary then, there appear to be three possible interpretations of the no-establishment clause.

(1) If any type of government action, whether in the form of direct payments or through tax abatement, has the effect of advancing religion, then it will be held impermissible. This means that tax exemption of churches and tax deductibility of church contributions are unconstitutional.



(2) If direct payments for purposes which advance religion are violative of the First Amendment but tax relief which may have a similar effect is constitutional, educational tax credits may be in the same category as charitable deductions and church tax exemptions and are constitutionally safe.

And (3) A literal interpretation of the First Amendment would rule out the establishment of a church under governmental auspices but would allow the spending of tax-raised funds as well as the granting of tax benefits, under whatever safeguards appear needed. Prospects for such a liberalization appear poor. The second interpretation probably best carries out a national consensus of friendly neutrality toward religion. It was well expressed by the Supreme Court's 1952 dictum: "When the state encourages religious instruction . . . it follows the best of our traditions."<sup>22</sup>

#### Are Educational Tax Credits Good Public Policy?

Authorization of educational tax credits is, in the opinion of its protagonists, the most promising method to widen the diversity of school offerings and to improve the quality of American education. It could bring freedom of choice among several types of schools and programs to within the economic reach of millions of parents, would permit them to select from a range of curricula and standards those best suited to their children's individual capacity and aspirations, and would motivate schools, public and private, to compete with each other for the reputation of giving their students the best education they can absorb.

In the opinion of opponents, however, tax credits would lead to a mass exodus from the public schools and thereby lead to the destruction of the system which over the past two centuries has lifted American education to excellence and has been a key factor in the rise of the United States to leadership in the free world. Many regard common schools with at least near-universal attendance an essential element in preparing children for life in a democratic society, which is composed of many people who are diverse in ethnic background, culture, tradition, social class, religion, capacity, interest, and other characteristics, who must learn early in life how to live and work together. They believe that a splintering of the educational process keeps a distance between groups and tends to aggravate tensions and conflicts between them, that they will not get to know and like each other, that they will not adjust to each other because they were not given an opportunity to mix.

Let us look more closely at some of those claims and counterclaims. Both sides agree that a major consequence of tax credits would be a sizable shift from public to nonpublic schools. In the words of one of the leaders of the opposition: "(Tax credits) would lead to the destruction of public education by giving parents a financial incentive to remove their children from public schools and place them in private and parochial schools."<sup>23</sup> Yet we may wonder how tax credits could conceivably offer a financial incentive for shifting to a nonpublic school as long as parents would be reimbursed for only part of their additional expenses. Tax credits could, at best,

lower the penalty for attending a nonpublic school, but they could never offer a financial advantage over enrollment at a public school. For sending children to a nonpublic school costs parents money, whether or not there are tax credits, and they will send them only if they prefer significant features of an available nonpublic school over those of their public schools and if the differential cost can be fitted within their budget.

Discipline ranks tops among the features close to parents' hearts. Albert Shanker, head of the American Federation of Teachers AFL/CIO, wrote: "Parochial schools are able successfully to have larger classes because of a tight discipline system. I doubt that many Catholic schools will indefinitely retain a student with chronic discipline problems, one who repeatedly disrupts the class or commits more serious infractions."<sup>24</sup> That may well be true. In fact, it may be a major reason why the income and the outcome of public school education have been moving in opposite directions: while funds and expenditures of public schools multiplied--on a per pupil constant dollar basis--the measurable results in terms of the pupils' skills and knowledge have been going down. Lack of discipline is responsible, to a good part, for dissatisfaction with the public schools and their results.

But public schools will not get tough by insisting on proper behavior or by upholding curricular standards as long as they enjoy a de facto monopoly in education. Their administrators know that most parents have no recourse and no alternative. If parents had a choice, public schools might start having second

thoughts about permitting their institutions to be turned into blackboard jungles.

Is it proper for government to force parents to send their children to a school which they would not choose if they had an option? Why should an option be available only to affluent parents? Is it good public policy and is it educationally productive to make alternative schools--whose spirit is more conducive to learning--inaccessible to most children? If millions of parents prefer the discipline enforced in nonpublic schools, why should they not have an opportunity to send their children there even if their economic circumstances do not allow them to pay high tuition charges?

#### The Effect on Public Schools

The U.S. Treasury on January 19, 1978, presented testimony to the Senate Finance Committee in opposition to tax credits and asserted that they would place further strains on the public school systems. When enrollment was rising rapidly in the 1950's and 1960's, we were told that the extraordinary influx was straining school resources. When over the past fifteen years over two million students shifted from nonpublic to public schools, this also put a burden on the latter. If that shift were to be reversed with enrollment in public schools declining by two million, would not that be a relief to their finances to the extent of at least \$5 billion a year rather than a strain? Would cutting their payrolls by over one hundred thousand teachers really be a strain on the public schools? It could be a

strain on those teachers who might have to seek jobs in nonpublic schools which typically pay lower salaries but demand more work.

It seems then that a shift to nonpublic schools would be a relief to the taxpayers who support the public schools. Taxpayers are now saving about \$11 billion a year because five million children are attending school at their parents' expense without cost to the taxpayers. It would be an equally good investment to devote a fraction of the per pupil cost in public schools, now estimated in excess of \$2,200 per year, to tax credits. That would encourage a shift from public to private schools. If nonpublic systems must continue to close schools because of the increasing financial pressure, the added costs will be placed on taxpayers. A closing of all nonpublic schools would boost state and local tax bills by at least \$11 billion a year. But if, say, one-fourth of the per pupil cost was applied to a tax credit, the tax payer would save three-fourths of the cost he now bears. That would seem a rather lucrative proposition for the taxpayer. In plain words, educational tax credits are not a cost, they are a productive investment. Budgetary arguments against tax credits--that they would cause heavy government revenue losses--are misleading. Tax credits would cause public expenditures to drop several times as much as revenues. Tax credits come at a profit to public treasuries not at a loss.

Demand for tax credits has been called "a church raid on the treasury," and some have asked: "Must the taxpayer contribute to the support of a religious institution, the doctrines of which he cannot accept?"<sup>25</sup> The question can be answered very simply: no

taxpayer is forced to pay for a child's education at a denominational school or would be so forced by tax credits. He gets a net reduction in his aggregate tax liability from a child's nonattendance at a public school. His tax reduction would be even greater if tax credits enabled more parents to shift their offspring to a nonpublic school

Similar opposition to tax credits is directed at more than merely preventing aid to nonpublic schools. Opponents resent the very existence of those schools as an infringement of the monopoly which the common schools ought to be granted as the only proper institution to educate children in a democratic--and egalitarian--society. It aims to eliminate nonpublic schools, if possible. Yet this monopoly is not recognized by the courts. For example, a massive drive to make enrollment at public schools compulsory for all children succeeded in Oregon in 1922. But the Supreme Court, in the landmark case of Pierce v. Society of Sisters, declared that attempt to establish a legal monopoly for the public schools and to eliminate nonpublic schools from the general education process to be unconstitutional: "The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."<sup>26</sup> The Pierce doctrine has since been cited in numerous relevant court decisions, including some of recent date, and is now beyond controversy. Forces opposed to nonpublic schools no longer hope to obtain a legal monopoly in education. But they aim to maintain and strengthen the de facto monopoly which the public

schools enjoy by keeping the economic penalty of exercising the Pierce option as heavy as possible--beyond the financial reach of all but a small fraction of American parents.

Some hold that the existence of nonpublic schools impairs and threatens the educational mission of the common schools: to process all, or at least almost all, children through the same educational processes in order to produce the "one best" product. That, of course, could not be accomplished as long as local communities were able to control their public schools. But local school control is but a fond memory as a nationally organized bureaucracy, federal, state, and local, gradually took command and has been increasingly tightening its grip. Nonpublic schools are the only means by which diversity can be offered to those dissatisfied with what is happening in and to the public schools.

The aim of the common schools is egalitarian. That, to many, is its virtue. It also is its downfall in terms of educational quality. The exodus from the public schools, which their supporters fear would result from the granting of tax credits, would be powered mostly by the burning desire of many parents to get for their children a better education than they can get at most public schools.<sup>27</sup>

How could the public schools be motivated to move from focusing on the lowest common denominator as their primary goal to the pursuit of excellence? By the necessity of competing with other schools for students. They do not now have to compete because most parents have no access to an alternative. Tax

credits might succeed in forcing public school systems to strive for the high standards they could boast of a long time ago. In an editorial in August 1978, the Washington Post called the pending tax credit bill "a fundamental assault on the public schools. Any vote for it in the Senate is a threat to the public school system."<sup>28</sup> Why would tax credits be a threat to the public schools? Because without the crutches of a de facto monopoly, the public schools might have to change from their fixation on the lowest common denominator to a pursuit of educational standards--or lose many of their students. The necessity to compete on less unequal terms with nonpublic schools, to have to play with a deck that is less heavily stacked, could do wonders for the quality of education in many public school systems. We need a diversity of schools because we have a diversity of people whose abilities and proclivities range from one end of the scale to the other. To try to force them all into an educational Procrustian bed is self-defeating and cannot but produce calamitous consequences.

#### The Tax Issue

Some oppose educational tax credits because the federal income tax is already riddled with too many loopholes. Such "backdoor spending" hides true costs from the public and exempts "tax expenditures" from the annual appropriations scrutiny by Congress. Why open another loophole? Let us view this matter in its proper perspective. Personal income in 1977 amounted to \$1,532 billion, of which \$731 billion appeared as taxable income on federal income tax returns--after exemptions, exclusions,



deductions, credits, etc. This suggests that 52 percent of personal income was not taxable. Counting items which are not included in personal income (as defined in the national income accounts) but are taxed under the Internal Revenue Code, we may estimate that at least 55 percent of all personal income, equal to \$850 billion in 1977, was not taxed. Itemized deductions accounted for \$138 billion. Deductions for charitable contributions amounted to \$17 billion, a fraction of which was accounted for by donations to religious institutions. A tuition tax credit averaging \$500 for each pupil in a nonpublic school--assuming that 80 percent of the current five million students pay regular tuitions--would total \$2 billion, which equals less than one-fourth of 1 percent of all nontaxable income, surely a tiny speck in the overall picture.

Congress prefers to accomplish certain objectives through tax concessions rather than expenditures for a variety of reasons. The most important among them is that direct appropriations, as a rule, mean stricter and more detailed governmental control through an expanded bureaucracy whereas tax credits or deductions usually grant greater discretion and freedom of choice to individuals, providing incentives for private initiative to act rather than for government to take over. On the other hand, appropriations often achieve the desired purposes more directly, more precisely and possibly more quickly.

Many or most of the deductions for educational, scientific, and charitable purposes could be replaced by appropriations for the benefited institutions, and this could greatly strengthen

governmental influence on their policies. But this could not be done in the case of religious institutions. Congress could not make appropriations to churches instead of letting individuals deduct their donations from adjusted gross income. This is equally true for church-affiliated schools. Donations to them are tax deductible. Tuitions could also be made deductible (or allowed as credits). But direct appropriations could not be substituted for the tax benefits. Therefore, if diversity is to be maintained or widened and if nonpublic schools are to be prevented from further diminishing and gradually fading from the scene, aid must be provided in indirect form by tax benefits--deductions or credits.

Still others have asserted that it would be unfair to grant tax credits for tuitions paid to a school because large numbers of people have no income tax liability and thus would derive no benefits. If this line of reasoning were correct, all deductions, exemptions, credits, etc., would have to be called discriminatory. If, for example, a person's income consists only of excludable items such as social security, veterans' pensions, or fellowships, he or she derives no benefit from personal exemptions or deductions. If a person's exemptions and deductions exceed his adjusted gross income, he gets no benefit from the excess. He gets no benefit from a casualty loss if he has no tax liability. Twenty-two million nontaxable income tax returns were filed for 1977. Their exemptions, deductions, and proportionate amounts for credits exceeded their income. Many of them derived only partial benefits from exemptions or

deductions. Does this mean that deductions and exemptions as such are unfair or discriminatory?

It has been proposed that if a tax credit for tuitions were to be enacted, taxpayers who have not enough tax liability to make full use of the credit should be paid their credit claims by the Internal Revenue Service. Otherwise, it is held, tax credits for tuitions will benefit only persons in the middle- and high-income brackets but penalize those with a low income. The authorization of tuition tax credits would lead to higher tuitions, which poor families would have to pay without a possibility of an offsetting benefit.

This problem seems unreal and contrived. It has always been the practice in schools to reduce or waive tuition for some students who are otherwise qualified and meritorious but cannot afford to pay the full or even partial tuition. Especially in parochial schools, tuitions are reduced or waived for students from low-income families with many children. If after the authorization of a tuition tax credit, tuitions are generally raised and the schools' income substantially increases, those schools will be more able to forego tuitions, wholly or partially, from students whose families lack sufficient tax liability to take full advantage of the tax credit.

To authorize payment by the Internal Revenue Service of tuition tax credits which exceed an individual's tax liability, or to persons with no tax liability, could jeopardize a system of tax credits for tuitions to nonpublic schools. It would involve payment of tax-raised funds to parents, which under Supreme Court

decisions would be unconstitutional because it could be used to advance religion.

Opponents charge that while tax credits are being demanded as tax relief for parents, the funds would actually be passed on to schools through higher tuitions. They would thus aid nonpublic schools, not parents. That is mere semantic obfuscation. Tax credits would help parents send their children to nonpublic schools. It makes really little difference at which point in the pipeline the funds are added which are needed (1) to enable schools to finance their operation or (2) to enable parents to pay the required fees. Tax credits are a technique by which we can avoid contact between the school and the government which could raise the specter of church-state entanglement and lead to possible control of the school.

#### Class and Racial Issues

Some assert that tax credits would benefit mostly the rich. While high-income families can easily be excluded from eligibility by inserting upper-income limitations in the program, as some proposed bills do, I do not believe this to be necessary or advisable. A few hundred dollars are not a critical element in rich families' decisions about their children's school attendance. By far, the overwhelming majority of families with children in nonpublic schools belong to the middle class--and will so continue if tax credits are authorized. Tax credits would lower the income level at which many parents might find it possible to afford doing what they have wanted to do--send their

children to a school of their choice, a school that is more consonant with their concepts of the type of education they want their offspring to receive.

It may well be that tax credits would provide relief not so much to parents with children in nonpublic schools as to all taxpayers. Nonpublic schools now account for about 10 percent of total school enrollment. Supposing tax credits helped to raise that to 20 percent. That would mean that savings to taxpayers on the cost of public schools would go up from the current 10 percent to a future 20 percent. In other words, taxes for school purposes--on property, income, sales--for all taxpayers could be reduced by 10 percent, minus the cost of the tax credit, which surely would be less. Estimating current per pupil cost in a public school at \$2,200 a year and a tax credit of \$500, the taxpayer's savings would amount to \$1,700 for every pupil who transfers from a public to a nonpublic school. If recent trends are an indication, most of the increase would probably occur in secular schools.

Concern has been expressed that tax credits might help the "white flight" and thus increase segregation. The fact is that laws and rules forbidding racial discrimination apply to public and private institutions alike, in education as well as in business generally, with regard to employment, admissions, housing, etc. Tax-exempt schools under the Internal Revenue Code must obey the same rules as public schools.<sup>29</sup> Many parochial schools now have sizable numbers of black and Hispanic pupils; some black organizations, such as the Congress for Racial Equality, run their own schools and support tax credits.

Would funds for public schools diminish if tax credits were enacted? There is no reason to assume that one dollar less would be spent per pupil, though the total amount might decline if many children were transferred. But an exodus of any size could motivate public schools to tighten discipline, lift their sights with regard to educational standards, and generally adopt policies, programs, and features which currently make nonpublic schools attractive to many parents. As long as public schools on the average spend at least three times as much per pupil as do nonpublic schools, the former should be able to offer a program that compares favorably with those of nonpublic schools.

Some regard the granting of tax benefits to be equivalent to the spending of treasury funds. That may be true if we assume that the government has a prior claim, that it owns all income but magnanimously permits an earner to keep a fraction of it. This leads us to the question whether it is preferable that government expand its functions and obtain the necessary funds from heavier taxes or whether we would rather have government do less--in fields in which the individual can take care of himself--provided the government leaves him enough of his earnings. The decision on educational tax credits thus is a good test of whether we prefer freedom or equality. We cannot have more of one without having less of the other.

Public schools are not an end in themselves. They are only a means to an end--to have the next generation properly educated. Can this best be accomplished by forcing students to mix or by enabling each individual to develop his capacity to the fullest

and according to his own leanings and aspirations? Why should it not be left to parents to decide which schools they deem best suited to help their children advance? Why should the power of government be employed to force children to attend a common school system if their parents cannot afford to pay the whole cost of their education? Is mixing in the schools essential? Has it led to greater harmony, or has it fostered animosity, friction, and conflict, which is haunting the public schools and weakening, if not destroying their effectiveness?

The state must support education to assure that all children, regardless of their parents' economic status, have an opportunity to be educated. But that does not mean that the state has to provide that education in its own institutions unless it is its purpose to force uniformity on the students. Diversity is an essential element in giving the maximum opportunity to an enormously diverse student body. It could be brought within the reach of many by the authorization of tax credits.

#### Educational Tax Credits--Why and How?

From its inception in 1913 the income tax law has permitted a number of deductions whose range has since been somewhat widened. The major deductible items are interest paid; state and local taxes, medical costs; contributions to certain nonprofit institutions such as religious, educational, scientific, organizations; and casualty losses. Standard deductions, to substitute for itemizing, were replaced in 1977 by zero bracket amounts.

Deductions (and exemptions) are subtracted from adjusted gross income to establish the taxable income, to which the rates

of the tax scale are applied to compute tax liability. Tax credits are commonly granted as a percentage of a particular item of expenditure or income and may go up to 100 percent. They have come into wider use in recent decades and include credits for retirement income, productive investment, taxes paid to foreign governments, state inheritance taxes against federal estate taxation, state unemployment taxes against federal employment taxes, political contributions, child care expenses, earned income, energy conservation, hiring of workers through the Work Incentive Program, etc.

The basic difference between a deduction and a credit is this: if a taxpayer contributes \$100 to a charitable purpose, he may be entitled to subtract \$100 from his adjusted gross income--if the total of his itemized deductions exceeds a certain amount, depending on his status. That means that if he is in the lowest taxable bracket, he gets a net reduction of \$14 on his tax liability. He must bear \$86 of his gift. If a taxpayer in the top income bracket contributes \$100, he reduces his tax liability to \$70, and the net cost of the gift to him is only \$30.

That, of course, is simply the result of our progressive rate scale, but it does not seem quite fair and has been called an "upside-down subsidy." The main effect of this system, which has long been criticized, is a lopsided concentration of gift-giving in the top income brackets and heavy dependence of educational and other institutions on a small number of wealthy individuals and families.

Tax benefits now available to schools, public or private, consist of the exemption of their income and property from income



and property taxes, exemption of certain transactions from sales or excise taxes in some jurisdictions, and the deductibility to donors of their contributions. Exemption from taxation of their own income and property is, of course, very helpful to the benefited schools. It reduces their expenses, but it does not help them increase their income, which is what they urgently need. This cannot be done from governmental sources directly. But government can provide incentives which could substantially boost the schools' revenues from their major private sources, gifts and tuitions. Deductibility of donations is of tremendous value and often essential to the schools' survival. But it is a far less effective stimulant than tax credits for donations would be.

A shift from deductions to credits would be of great help to taxpayers in the lower brackets. For example, a property tax payment of \$1,000 costs a taxpayer in the lowest tax bracket \$860, a taxpayer in the highest bracket only \$300. A 50 percent tax credit would save a taxpayer \$500, regardless of the bracket he is in. This explains why Congress has for some years often shaped new tax relief measures in the form of credits rather than as deductions. This is also why in the field of education emphasis has shifted from tax deductions to tax credits.

It has been asked why Congress permits so many deductions, exemptions, credits, etc., instead of taxing all personal income. But many question whether it would be fair to disregard the special burdens which many bear due to circumstances or by their own volition. The principal author of the Internal Revenue

Code of 1954, under which we still operate, Dan Throop Smith, then deputy to the secretary of the treasury, declared in 1957: "Most, if not all, of the allowed deductions are intended to increase the fairness of the tax."<sup>30</sup> Subsequently, Smith wrote: "All of the deductions allowed in computing the taxable income of individuals are designed to give relief to the taxpayers benefiting from them and thereby make the law fairer."<sup>31</sup> C. Harry Kahn of Rutgers University, author of a standard work on tax deductions, defined two purposes: (1) to provide greater equity and (2) to promote desirable activities.<sup>32</sup>

Congress tried for many years to reduce deductions and close "loopholes." But whenever it attempted such tax reform, nontaxable income accounted for a larger percentage of total personal income afterwards than it had before. At the present time, at least 55 percent of personal income is beyond the reach of the federal income tax; most of the untaxed income is in the low- to low-middle income brackets.

The law provides a financial incentive to engage in or expand activities which are regarded to be in the public interest. Some of them are of the type that would have to be undertaken and financed by government if they were not provided by voluntary action. Hospitals, schools, libraries, and museums are in that category. Congress may find that it is less costly to the taxpayers if government offers individuals or organizations an incentive to devote their own funds for such purposes than to have to underwrite the entire cost through taxes. More

important, it may deem it preferable that certain activities be carried on under private auspices, partially or fully, and not be under direct governmental control or become a governmental monopoly. A greater diversity is often desirable so as to permit the widest range of individual freedom, consistent with the obligations and purposes of government.

Some deductions are allowed for activities which are regarded to be in the public interest but could not be carried on by government. This applies particularly to donations to churches and church-affiliated schools. Government cannot, under the Supreme Court's interpretation of the First Amendment, expend tax-collected funds for religious activities. To what an extent and in what form tax benefits may be made available to denominational schools is not entirely clear because of inconsistent Court decisions. In 1917 Congress first authorized tax deductions for contributions to religious and other charitable purposes up to 15 percent of an individual's income, subsequently raised the limit to 20 percent, then to 30 percent, and finally, in 1969, to 50 percent, where it now stands.

Efforts to make tuitions to educational institutions a tax-deductible item go back at least thirty years but were not successful. In the later 1950's the emphasis began to shift from deductions to credits as a more effective and fair method of accomplishing the same ends.

As it becomes increasingly clear that the courts would not permit direct grants to church-connected institutions, their supporters focused efforts increasingly on tax credits,

especially in the field of higher education. The Senate passed tuition tax credit bills for colleges on six occasions between 1963 and 1978. None of those bills managed to get through the House because the powerful chairman of the Ways and Means Committee, Wilbur Mills of Arkansas, was strongly opposed to the idea of tax credits, as was, at least until some years later, his successor, Al Ullman of Oregon. Public school forces, led by the National Education Association and the American Federation of Teachers, strongly fought tax credits in higher education because they were afraid that their approval might set a precedent for the lower schools.

In the elementary-secondary field a drive was underway in the 1950s and 1960s for a major program of federal financial support of public schools. Catholic school forces were hoping to obtain tangible benefits in return for agreeing to far larger amounts going to public schools. The outcome of lengthy negotiations over nonpublic participation in programs of the Elementary and Secondary Education Act of 1965 made it clear to denominational schools that they could at best expect a few crumbs. Faced with a toughening attitude of the Supreme Court regarding public funds for nonpublic schools, they directed their efforts at tax benefits but were rebuffed in 1973 by the Niquist decision.

The leaders in the congressional drive for aid to nonpublic education--Patrick Moynihan of New York and Robert Packwood of Oregon in the Senate, Charles Vanik of Ohio and Bill Frenzel of Minnesota in the House--finally decided that their best strategy for overcoming arguments that their proposals were

unconstitutional would be to take the bull by the horns--to bring an act of Congress, authorizing tuition tax credits, to the Supreme Court for a clearcut yes or no. They managed to get a bill on tuition tax credits at all levels of education through the House in June 1978 but ran into a stone wall in the Senate. Led by Ernest Hollings of South Carolina and Robert Hodges of Arkansas, the Senate eliminated participation by elementary-secondary schools in tuition tax credits while approving them for colleges.

Some members of Congress were influenced by President Carter's repeated threat that he would veto any tax credit bill that reached his desk. His heavy political commitment to the National Educational Association (Senator Moynihan called Mr. Carter a "wholly owned subsidiary of the N.E.A.") made a compromise impossible.<sup>33</sup>

Attempts at reconciliation through Senate-House conferences failed. The House would not accept a bill without the elementary-secondary schools, and the Senate would not accept it with them. The Senate rejected a proposed compromise, which would have included secondary schools but excluded elementary schools. The bills died with the Ninety-fifth Congress.

#### Future Prospects

Attempts are now under way to again have tuition tax credits authorized by the Ninety-seventh Congress. The Republican platform calls for them, and President Reagan has long been a strong supporter of educational tax credits and has stated on

several occasions--before and after his election--that he would propose them to Congress. Congressional shifts in the November 1980 elections appear to give educational tax credits a far better chance than they ever had. The new chairmen of the congressional committees in whose jurisdictions such bills fall, the Senate Finance Committee and the House Ways and Means Committee, Senator Bob Dole of Kansas and Representative Dan Rostenkowski of Illinois, respectively, voted in favor of tuition tax credits at all levels of education in their respective houses in 1978.

The attitude of the Supreme Court remains a question. It never had the issue of tuition tax credits before it nor an act of Congress authorizing tax benefit for denominational schools. It has historically been reluctant to override action by a coequal branch of government without very compelling reasons. So there is a chance--but no better than that--that it may find a formula that permits it to uphold tuition tax credits without explicitly reversing some of its related earlier decisions. Moreover, changes in the Court's membership are likely to take place within the next two or three years which could lead to a shift in narrow majorities. But, of course, this is in the realm of speculation.

A strategy that might be worth considering would be to add tuitions to the currently allowable deductions instead of advancing tax credits at this time. The Internal Revenue Code's first item of charitable deductions is for contributions to churches. It might be difficult for the Court to declare that

tax deductions for tuitions to denominational schools aid religion and are therefore unconstitutional but that deductions for donations to the same schools do not aid religion and are constitutional. Nor could the Court find that payments to church-sponsored schools aid religion but that payments to the churches they are affiliated with do not. There must be a limit somewhere to the Court's ability and willingness to twist logic to suit the predilections of some of its learned members.

Tax deductions would not be a satisfactory means to accomplish the desired ends. But they could, within a reasonable time, be converted into credits. In the elementary-secondary school field, a 50 percent tax credit, with a maximum offset to tax liability of \$500--similar to the Moynihan/Packwood and Frenzel/Vanik bills in the Ninety-Fifth Congress--might be a good approach. In the higher education field a sliding percentage scale of credits--which I proposed to the Senate Finance and Welfare committees in the early 1960s--might be preferable.

Related types of tax credits might be considered. If parents are to be helped in paying tuitions to nonpublic schools, there is no reason why others--friends, associations, employers, etc.--should not be equally encouraged to help. An effective way to stimulate charitable contributions and thereby motivate and expand voluntary action would be to permit a shift of donations from deductions to tax credits. That would, above all, reduce the concentration of donors in the high-income brackets to make donations to their favorite educational institutions. Those who feel that nongovernmental initiative is generally preferable to government-direct operations might find that this would offer new prospects for wide-ranging shifts from the public to the private sphere.

## NOTES

1. NOTE FOR ALL STATISTICS: All data not otherwise noted emanated from the National Center for Education Statistics (Department of HEW and Department of Education). The main sources were: Digest of Education Statistics (1979), Projections of Education Statistics (1976-78), The Condition of Education (1980), Selected Public and Private Elementary and Secondary Education Statistics (School years 1976 through 1978-79), Bulletin NCES 80-B01 (October 1979), and from the Bureau of the Census: Current Population Series P-20 #355 (August 1980).
2. Dennis A. Williams, "The Bright Flight," Newsweek, April 20, 1981, p. 66.
3. Everson v. Board of Education, 330 U.S. 1 (1947).
4. U.S. Constitution, First Amendment (1791).
5. Everson v. Board of Education.
6. Zorach v. Clauson, 343 U.S. 306 (1952).
7. Lemon v. Kurtzman and Earley v. DiCenso, 403 U.S. 602 (1971).
8. Lemon v. Kurtzman.
9. Walz v. Tax Commission, 397 U.S. 664 (1970).
10. Ibid.
11. Committee for Public Education v. Niquist, 413 U.S. 756 (1973).
12. U.S. Code Title 26, par. 170 (b)(1)(A)(i).
13. Committee for Public Education v. Niquist.
14. Justice Douglas, when a freshman on the Court, was told by Chief Justice Charles Evans Hughes: "At the constitutional level at which we work, ninety percent of any decision is emotional. The rational part of us supplies the reasons for supporting our predilections"; William O. Douglas, New York Times Magazine, September 23, 1980, p. 39.
15. Wolman v. Walter, 443 U.S. 229 (1977).
16. Byrne v. Public Funds, 442 U.S. 907 (1979).
17. Public Funds v. Byrne, 590 F.2d 514, U.S. Court of Appeals, Third Circuit (1979).
18. Meek v. Pittinger, 421 U.S. 349 (1975).
19. Tilton v. Richardson, 403 U.S. 672 (1971).



20. Lemon v. Kurtzman.
21. It is impossible to close our eyes to the fact that the author of the Niquist decision comes from the Bible Belt--a judge who on other issues rather consistently has come down on the side of private initiative and in opposition to governmental action when proper alternatives were available. Anti-Catholic sentiment almost certainly is not the dominant factor in the opposition to educational tax credits for nonpublic schools. But it may at times be just strong enough to tip the scales on some crucial votes.
22. Zorach v. Clauson.
23. Albert Shanker, "Is the Opposition Anti-Catholic? A New Low in Debate Over Tax Credits," New York Times, January 18, 1981, p. E9.
24. Ibid.
25. D. L. Judd, Saturday Review, February 20, 1971.
26. Pierce v. Society of Sisters, 268 U.S. 510 (1925).
27. A self-appointed "semi-retired participant in the liberal consensus," Chester Finn, long-time education assistant to Senator Patrick Moynihan, recently made "preoccupation with questions of educational equity and equality and a pronounced lack of interest in the issues of quality" the subject of a brilliant article and incisive critique; Chester E. Finn, Jr., "The Future of Education's Liberal Concensus," Change, September 1980, p. 26.
28. "Tuition Tax Credits," Washington Post, August 7, 1978.
29. Internal Revenue Code, sec. 501(c)3.
30. Dan Throop Smith, "General Policy Problems of Tax Differentials," in Income Tax Differentials, symposium by the Tax Institute of America (Princeton, NJ, 1958), p.6.
31. Dan Throop Smith, Federal Tax Reform (New York: McGraw-Hill, 1961), p. 90.
32. C. Harry Kahn, "Personal Deductions in the Income Tax," Tax Revision Compendium, Committee on Ways and Means, U.S. House of Representatives, 1959, pp. 392ff.
33. Daniel P. Moynihan, National Review, February 6, 1981, p. 116.

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June 16, 1981

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The Hon. Robert Dole  
Chairman, Senate Committee on Finance  
2227 Dirksen Senate Office Bldg.  
Washington, DC 20510

Dear Mr. Chairman:

In July of 1980 the Thomas J. White Center on Law and Government of the University of Notre Dame sponsored in Washington, D.C. a symposium for the purpose of exploring extensively some of the major problems facing nonpublic elementary and secondary education. My colleague, Professor Edward McGlynn Gaffney, has edited a volume of the essays generated for this conference, soon to be published by the University of Notre Dame Press under the title Private Schools and the Public Good: Policy Alternatives for the Eighties.

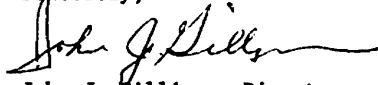
All of the essays in this volume merit the serious reflection of Members of the Congress deliberating on important proposals that will affect the quality of nonpublic education in this decade. I single out four of these essays because of their special salience and relevance to the topic of the current hearings on the policy wisdom and constitutionality of the tuition tax credit. They are chapter one, "Catholic High Schools and Minority Students," by Fr. Andrew M. Greeley; chapter three, "How Federal Policies Discourage the Racial and Economic Integration of Private Schools," by Dr. Thomas Vitullo-Martin; chapter eleven, "Federal Scholarships for Private Elementary and Secondary Education," by Professors Stephen D. Sugarman and John E. Coons, and chapter fourteen, "On Making It Look Easy by Doing It Wrong: A Critical View of the Justice Department Position Papers," by Professor Antonin Scalia.

My experiences as Governor of Ohio in the early Seventies have convinced me that if there is to be any hope of finding a solution to the educational problems that we face in the Eighties, we must resist the urge to divide the educational universe into separate and rival domains and duchies: public schools against private; academic programs versus vocational training; suburbs against central cities; underprivileged children versus the affluent; minorities against majority. That tendency seemed to me then, and seems to me now, to accomplish nothing in terms of advancing the interests of one sector of education in relation to others, but rather to provide ammunition to those who were seeking any and every rationale for curtailing support to education as a whole. Participants in this kind of fratricidal strife were-- and are--thus inflicting serious damage on the very enterprise they profess to defend and serve.

Dole  
Page 2

I trust that you will find the enclosed essays of value to your colleagues in the Senate and respectfully request that you include them in the record of your hearings on the tuition tax credit proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "John J. Gilligan", with a long, sweeping horizontal flourish extending to the right.

John J. Gilligan, Director  
Thomas J. White Center on  
Law and Government

JJG:nw

enclosure: fove copies of materials for inclusion in hearing record

# PRIVATE SCHOOLS AND THE PUBLIC GOOD

*Policy Alternatives for the Eighties*

EDWARD McGLYNN GAFFNEY, JR., EDITOR

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# 1. Catholic High Schools and Minority Students

**Rev. Andrew M. Greeley**

One of the more interesting educational phenomena in the United States in recent years has been the increased enrollment in Catholic secondary schools by black and Hispanic students.<sup>1</sup> Approximately half of the blacks who attend Catholic schools are not themselves Catholic and while more than nine-tenths of the Hispanics in Catholic schools are Catholic, the countries from which Hispanic Americans have come do not have a tradition of Catholic comprehensive education similar to that in the United States. One need only speak to black or Hispanic parents who make the choice of Catholic secondary schools (and primary schools too for that matter) to realize that their choice is based on the assumption that their children will receive better education in the Catholic schools than they will in public schools. Until recently, however, there was no solid evidence to support this "market choice" made by minority parents.<sup>2</sup> But the High School and Beyond study, a longitudinal study of American secondary students, currently being conducted by the National Opinion Research Center for the National Center for Education Statistics under the direction of Professor James S. Coleman, provides data with which the performance of Catholic secondary schools can be analyzed. The sample design of the High School and Beyond study is such that private secondary schools with large black and Hispanic enrollments were oversampled. Thus of the more than 70,000 sophomores and seniors to whom questionnaires were administered, a little more than 7,000 were in Catholic secondary schools and more than 2,000 of these were black or Hispanic. The basic sample design was a national probability sample and the analysis reported in this essay included all the Catholic school students and a random subsample of 7,000 public school students.

Even if the impressions of black and Hispanic parents are correct, and the young people who attend Catholic secondary schools do better academically, it does not necessarily follow that the Catholic schools are responsible for the superior academic outcome. Educational research in recent years has demonstrated that to a considerable extent, outcome is a function of input. Schools which feature young people from well-educated, powerfully-motivated, and affluent families will produce graduates who are very different from schools whose enrollees come from different family backgrounds. To make sure that there is a "school effect," one must first of all hold constant the "family input" variables which might effect the "academic outcome."



## CATHOLIC HIGH SCHOOLS AND MINORITY STUDENTS 7

One must distinguish the background characteristics of a student—familial and personal—from school factors which might also have an influence in academic outcome.<sup>3</sup> In the analysis to be summarized in this essay, the bias was "conservative," that is, in the direction of holding constant all possible background variables before considering the possibility of the school effect.

It is perhaps worth noting what "hold constant" means in this context. The comparisons that are finally made, with the variables at the bottom end of model, are comparisons that are made between Catholic and public school students who have the same family income, the same parental education, the same parental college expectations, the same family learning environment, the same psychological well-being, the same college aspirations when they were in eighth grade, and the same style of using their time.

As Table 1 illustrates, minority students in Catholic schools (and, indeed, white students in Catholic schools) were strikingly different from those in public schools. They were twice as likely (44 versus 22 percent) to report more than five hours of homework a week, and nearly 30 percentage points more likely to say that they were confident that they could graduate from college.

Table 1  
ACADEMIC OUTCOME MEASURES  
IN CATHOLIC AND PUBLIC HIGH SCHOOLS

	Catholic	Public
<b>A) ACADEMIC PERFORMANCE INDEX</b>		
Z Score (Percent of standard deviation from the mean)		
White	25	-01
Black	-44	-91
Hispanic	-23	-77
<b>B) HOMEWORK</b>		
(Percent doing more than 5 hours of homework a week)		
White	42	23
Black	44	22
Hispanic	44	22
<b>C) COLLEGE ASPIRATIONS</b>		
(Percent expect to graduate from college)		
White	64	42
Black	77	48
Hispanic	66	38

Table 2 reports the finding that on standardized achievement tests, prepared for the High School and Beyond study by the Educational Testing Service, Catholic school minority students were half a standard deviation above public school minority students.

Table 2  
 ACHIEVEMENT TEST SCORES  
 BY RACE AND TYPE OF SCHOOL ATTENDED  
 (Z score)

	Vocabulary		Reading	
	Catholic	Public	Catholic	Public
White	32	-05	21	00
Black	-39	-93	-27	-77
Hispanic	-12	-75	-18	-73

	Math 2		Math 2	
	Catholic	Public	Catholic	Public
White	25	00	15	-03
Black	-46	-87	-36	-63
Hispanic	-23	-71	-16	-47

	Science		Writing	
	Catholic	Public	Catholic	Public
White	21	12	31	00
Black	-58	-96	-37	-91
Hispanic	-29	-69	-16	-65

	Civics		Academic Performance*	
	Catholic	Public	Catholic	Public
White	23	-04	25	-01
Black	-13	-66	-44	-91
Hispanic	-11	-52	-23	-77

\*Reading + Math 1 + Math 2.

As was expected, the young people who went to Catholic secondary schools came from very different backgrounds. Their parents were far more likely to be college educated and have much stronger college aspirations for their children, higher income levels, and were far more likely to provide a learning environment conducive to studying. The young people themselves had strong college aspirations before they came to high school, have much higher personal morale, and have more intellectually-oriented habits with regard to their use of time. It is also true, however, that those who attend Catholic schools give their institutions much higher ratings in terms of the quality of instruction and the interest and competence of the teachers, and describe their schools as both fairer and more effective in their disciplinary programs and having substantially less disciplinary problems. Moreover, both teacher

## CATHOLIC HIGH SCHOOLS AND MINORITY STUDENTS 9

effectiveness and disciplinary environment are not the result merely of the student's background. In part, they are affected by whether a religious order owns the school and a substantial amount of difference remains even after that factor is taken into account. As Tables 3 and 4 illustrate, the differences in disciplinary environment in the Catholic schools are not imaginary. And they are not a function of student characteristics. Rather, they represent a real contribution of the school itself above and beyond the type of student the school recruits.

Table 3  
SCHOOL DISCIPLINE INDEX IN  
CATHOLIC AND PUBLIC HIGH SCHOOLS

	Catholic	Public
Z score (High Score = low problem)		
White	43	-49
Black	32	-50
Hispanic	58	-58

Table 4  
APPROVAL OF SCHOOL'S DISCIPLINE SYSTEM  
(Z score)

	Catholic	Public
White	23	-28
Black	24	-20
Hispanic	49	-15

For example, it is theoretically possible that the higher scores on standardized achievement tests of Catholic school minority members, might be the result of family background or school effect or of some combination of both. In fact, when multiple regression equations were constructed to account for the difference in college aspirations of high school students, the background variables account for almost all of the difference. High school students who attend Catholic high schools are more likely to be confident that they will graduate from college because they come from families where there is more education and a greater expectation of college graduation, and because they themselves, before they came to high school, had already planned to go to college. This outcome of Catholic secondary education turns out not to be a real outcome at all, but rather to be an effect of differential input.

The same explanation, however, does not hold for the differ-

ences in homework and in academic test scores. About half of the differences between public school and Catholic school minority students can be accounted for by family and personal input variables. The other half of the difference still remains and can only be accounted for when one takes into consideration the disciplinary environment, the quality of instruction, and religious order ownership of the institution. It would appear, then, that the higher academic test scores of Catholic school minority students is in part the result of background, but is also in part the result of a school effect. About one-quarter of a standard deviation on academic tests can be attributed to the school itself above parental input.

It is the nature of such research that one can never exclude any explanation with absolute certainty. Thus it may well be the case that there is a parental input aspect for which we have not accounted in the present research. All that can be said is that before the research began, the assumption would have been in favor of an input explanation of a differential output. Now the burden of probability seems to tilt somewhat in the direction of school effect as a partial explanation for the difference between young minority group members in Catholic and public schools.

Parental choice (either ratifying the choice of the adolescent or constraining it) does make a difference. But all the obvious differences, it would seem, have been taken into account in the present research. There may be more subtle differences, and their possible impact will have to be studied in future research. It is necessary now for those who still insist on a parental input explanation of the success of Catholic schools to specify precisely what the family factor is that may be responsible for this apparent success.

One may push the present analysis a bit further by asking whether there is some structural dimension of Catholic secondary schools not likely to be the object of parental choice which when varied produces a variant in the apparent Catholic school effect. It was my suspicion in the beginning of the present research that the Catholic school academic effect would in part be especially in the smaller schools where there could be more personal attention. Since size of school was not likely to be something the minority parents would take into consideration (he or she or they would most likely choose the school that was reasonably close regardless of size), it seemed reasonable to ask whether it was indeed a variation of Catholic school effect that varied with school size.

The finding went in the opposite direction of what I had anticipated. It was precisely in the largest schools (schools with more than 500 students) that this Catholic school effect was most noticeable, a difference of two-thirds of a standard deviation between Catholic and public school students. In other words, school size does not affect the academic achievements of those who attend public schools, but it does affect academic achievement of

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those who attend Catholic schools. Even in the small schools, the Catholic school students did better academically, but they did strikingly better academically in schools with more than 500 students. And indeed the amount of the difference between public and Catholic schools that must be accounted for by variables other than family background increases drastically in larger schools so that two-fifths of a standard deviation in the difference of achievement scores remains after the background factors have all been taken into account. And this very substantial difference diminishes to statistical insignificance when disciplinary effectiveness, quality of instruction, and religious order ownership are taken into account. The facts that the outcome varies with school size and that the relative effectiveness of the school impact also varies with school size and that school size is not likely to be an object of parental choice—all enhance the probability that we are dealing with an authentic school effect and not merely a choice or family input effect.

The likelihood that there is an authentic school effect is enhanced by the fact that there is only a small correlation between parental social class background and academic achievement in the Catholic schools. Indeed by the time students are seniors, the difference between the academic achievement of those from college educated families and non college educated families is practically non existent. This phenomenon is true for whites, blacks and Hispanics. The success of the Catholic schools is not among those who come from affluent and well educated black and Hispanic families but among precisely the opposite—from the less affluent and non college educated.

Presumably the phenomenon is "ethnic"; the Catholic secondary schools were established between 1900 and 1960 to facilitate the upward mobility of the immigrant poor. Somehow they learned how to eliminate social class disadvantages among those immigrant poor. They continue to do so, though now a different clientele is being served than those for whom the schools were originally founded. Ironically half the white Catholics in Catholic schools come from college educated families—from families whose own upward mobility was facilitated by these schools a generation ago. For such young people Catholic schools do not make a great deal of academic difference (indeed if the school is small and diocesan owned, it is likely to produce lower achievement scores than the public schools among its white Catholic college family clientele).

The success of the Catholic secondary school in eliminating the social class impact on educational achievement means that they in fact do what the public schools claimed at one time to do, but in fact do not do now—provide an equality of educational opportunity independent of the social class of parents. The Catholic schools seem, in fact, to be the real "common" schools.

Obviously more research is needed to confirm the findings reported in the present essay. It would, however, be appropriate

to note that in most other "input/output" research, scholars would speak with considerable confidence if they had data such as those analyzed in the present essay.

But is it not true, as some critics of the present research have judged, that black students are more likely to be in all-black schools if they attend public schools and therefore the real effect of Catholic schools is one of racial integration? In fact, this assumption proves not to be the case. As can be seen in Table 5, a black young person attending a Catholic secondary school is just as likely as a black young person attending a public secondary school to be in an all-black school—and is as likely also to be in a racially-integrated school.

Table 5  
RACIAL INTEGRATION (AS DESCRIBED BY BLACK STUDENTS)  
(Percent)

	Catholic	Public
Few blacks	30	29
Half blacks	21	28
Most blacks	32	24
All blacks	17	19
	100%	100%

Moreover, as Table 6 illustrates, there is no correlation in academic performance and racial integration for those who attend public schools. But there is one for those who attend Catholic schools. Catholic schools achieve superior academic results at all levels of integration but especially where the black young person is in a school where most of the students are white. In other words, racial integration does indeed have an academic effect, but only in Catholic schools; this enhances the power of the Catholic school effect. Thus, even when the racial integration factor is taken into account, the phenomenon of differential effects for minority young people who attend Catholic schools persists.

Table 6  
ACADEMIC PERFORMANCE FOR BLACKS  
BY RACIAL INTEGRATION  
(Z Score)

	Catholic	Public
Few blacks	-01	-83
Half blacks	-39	-78
most blacks	-47	-72
All blacks	-52	-70

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Those black and Hispanic parents who choose Catholic schools, then, apparently do receive an academic payoff for their choice over and above that which they themselves contribute. In their own economic and motivational resources, the "product" they buy is a bargain. As Table 7 illustrates, average tuition at Catholic schools is around \$850 a year (no different for schools with substantial numbers of minority students), less than half that of "other" private schools, and less than a third of that of elite private schools.

Table 7  
TUITION AT PRIVATE SCHOOLS

	Mean	STD
Catholic	\$ 857	\$ 278
Black Catholic	839	196
Hispanic Catholic	855	162
Elite private	2,713	936
Other private	1,928	1,212

Furthermore, as Table 8 illustrates, the per pupil cost of Catholic schools is not much in excess of the tuition. And as Table 9 illustrates, of the approximately \$1,000 per year per pupil cost, more than three-quarters is accounted for in tuition; 9 percent comes from fund raising (bingo, raffles, etc.); 11 percent more comes from subsidies (presumably from parishes or dioceses); and only 1 percent comes from government help.

Table 8  
PER PUPIL COST FOR VARIOUS SCHOOLS

	Mean	STD
Public	\$1,807	\$ 689
Public alternative	2,218	677
Ordinary Catholic	1,097	374
Catholic black	1,139	489
Catholic hispanic	962	210
Elite private	3,598	2,503
Other private	1,508	1,583

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Table 9  
 FUNDING OF CATHOLIC SCHOOLS  
 (Percent)

	Ordinary	Minority
Tuition	74	79
Fund raising	9	7
Subsidy	11	9
Endowment	2	0
Other	3	4
Government	1	1
	<u>100</u>	<u>100</u>

Per pupil cost in Catholic schools is approximately half of that in public schools. About \$200 of the \$1,000 per year difference in per pupil cost can be attributed to the fact that Catholic schools pay their teachers less (\$8,000 a year for a beginner with an A.B. as opposed to \$10,000 in public schools), have a higher student/faculty ratio (18 students per faculty member as opposed to 13), and are slightly less likely to have M.A.s or Ph.D.s (45 percent versus 50 percent). The rest of the difference, however, cannot be explained by data presently available to us. In other words, Catholic schools do a better educational job for minority young people (and all young people for that matter) and they do so for \$1,000 a year less, \$790 a year less even when you take into account lower salaries, larger classrooms, and less teacher training. One might perhaps forgive public school administrators if they are wondering where the Catholic school administrators purchased the mirrors with which they work these miracles.

Neither the research project, of which this article is a synopsis, nor the article itself will take a stand on public policy questions, particularly concerning federal aid to Catholic secondary schools. One could make an argument from the present analysis that such aid ought to be increased because the Catholic secondary schools apparently do such an effective job in educating minority children. Or one might also argue that intervention of government through its assistance in the work of Catholic secondary schools might impede their effectiveness. At the present time I am content merely to note that with only 1 percent of their budget covered by government assistance, Catholic secondary schools do very well indeed.

The High School and Beyond research on Catholic secondary schools is by no means finished. The project will continue for four more years and, God and funding agencies willing, the Catholic school phase of the project will also continue. At a later stage the impact of Catholic primary schools on minority students will also be considered. It is by no means impossible, for example, that some of the impact reported here of Catholic secondary schools will turn out



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to be a function of the fact that many of the young people who attend secondary Catholic schools have also gone to Catholic parochial schools for their grammar school years. Moreover, an attempt will be made to specify more thoroughly what it is about the classroom experience in Catholic schools that seems to be so successful.

Finally, both in future phases of the High School and Beyond project, and hopefully in other research enterprises, family background characteristics must be studied more rigorously to diminish the likelihood that the effects reported in the present project are not, in fact, the parental choice effect masking as school effect.

Even more difficult than explaining the Catholic school impact, however, is explaining why this impact has not hitherto been studied. The phenomenon of enthusiasm for Catholic schools among black and Hispanic parents is well known. Yet no agency private or public has been willing to fund research on the subject. Indeed, one project was rejected by the National Institute of Education (while Patricia Graham was director) on the ground that it would tend to "redound to the advantages of those schools"—certainly a curious criterion for a presumably scholarly government agency to utilize.

Six percent of the minority students in the country attend Catholic secondary schools. Approximately 10 percent of the minority children are in Catholic primary schools. The achievements of the students who attend such schools are dramatic and the costs of such achievements are remarkably low. How could educational scholars and scholarly funding agencies continue to ignore such a fascinating educational laboratory? Very likely they will continue to ignore the achievements of Catholic schools and the problem of why they do so will continue to be at best inexplicable.

Furthermore, Catholic agencies should be far more willing to fund research on Catholic schools. At one time long ago it seemed that Catholic institutions did not want to research Catholic schools for fear they would be found effective.<sup>4</sup> It almost seems that there is a crisis of confidence and of identity that has plagued Catholic education for many years. Those who wish to continue this crisis of confidence will find no consolation in the data analyzed in the present project.

## NOTES

1. The data summarized in this report were collected by the National Opinion Research Center under contract with the National Center for Education Statistics. The analysis was funded by grants from the Ford Foundation and the Spencer Foundation. I am grateful to the members of the High School and Beyond team for their cooperation, especially to James Coleman, Carol Stocking, Fansayde Calloway, and Lawrence Dornacker. Comments from other NORC colleagues were very helpful—Robert Michael, Norman

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2. The word "minority" is used to stand for the words "black" and "Hispanic." No special ideological meaning is attached to the word.

3. The model used to explain differences in standardized achievement test scores focused on family characteristics, student characteristics, and school characteristics. The family characteristics used in this model were: father absent, income, parental education, parental aspirations for student's college attendance, family learning environment (specific place to study, daily newspaper, encyclopedia, typewriter, more than 50 books, a room of one's own, pocket calculator), family monitoring of homework. Student characteristics were: psychological well-being, college aspirations in Grade 8, hours of television watched per week, use of time (high on reading for pleasure, reading the newspaper, talking with mother or father about personal experiences, low on visiting with friends at local gathering place, going out on dates, driving around, talking with friends on telephone, thinking or daydreaming alone). School characteristics were: owned by a religious order, student rating of teachers (quality of instruction and interest in students), discipline problems (truancy, skip class, talk back to teacher, refuse to obey instructions, get in fights with each other, attack or threaten teachers.)

4. An additional reason for this result may be the unwillingness of Catholicism in the United States either to recognize that good research costs money or to pay for high quality products.

### 3. How Federal Policies Discourage the Racial and Economic Integration of Private Schools

Thomas Vitullo-Martin

For more than a decade private schools have been voluntarily increasing their enrollment of black and Hispanic students. Minority families are seeking to register their children in private schools, although the federal and state governments have offered no incentives to private schools to accept minority students. On the contrary, despite the federal authorities' concern for the potential segregating effect of private schools, the government has pursued taxation and program policies that make the enrollment of minorities in private schools more difficult.

#### MINORITY ENROLLMENTS: PROBLEMS

Even without such governmental policies, private schools have trouble enrolling minorities. Each of the two largest private systems—Catholic and Lutheran—is operated by a church whose membership is only about 2 percent black. To enroll black students, these church-operated schools—which account for about 75 percent of all private school enrollments—would have had to change traditional policies of orienting education services to members of their own religion.

Table 1  
PERCENTAGE CHANGE IN BLACK ENROLLMENTS IN  
PRIVATE SCHOOLS, 1969-1979

Level	Percentage Black, 1969		Percentage Black, 1979	
	School-aged Population	Private Schools	School-Aged Population	Private Schools
Elementary	14%	4%	15%	8%
Secondary	12%	5%	15%	7%

Source: Bureau of Census, Current Population Reports, "Population Characteristics," Series P-20, No. 355, Issued August, 1980.

In 1969 only 4 percent of private elementary school students were black, but by 1979 8 percent were black. If black students had been proportionately divided between public and private schools,

these schools would have been 14 percent black in 1969 and 15 percent black in 1979, matching the proportion of blacks in the elementary-school-aged population. Private schools fell short of these goals, but made remarkable progress in closing the distance by almost doubling the proportion of blacks in their schools in the decade.

In any event, perfect distribution of minorities in private schools is an inappropriately high standard. First, private schools are not evenly distributed throughout the country, but are concentrated in cities, especially cities in the Northeast and Midwest. Minorities, on the other hand, are still concentrated in the rural areas of the South and the Southwest. While 55 percent of all minority students lived in the South and West in 1977, these regions enrolled only 35 percent of private school students. Hence, for private schools to enroll a perfect proportion of minority students, they would have to enroll higher proportions of minorities than are living in their drawing areas.

Second, because no public subsidies exist for private schools, they must charge tuition or raise revenues from contributors. Most private schools do both. In the past decade, inflation and institutional changes in the major private system aggravated the difficulty of increasing minority enrollment, because minorities as a group had disproportionately low incomes throughout the decade. Catholic schools raised the average elementary school tuition 350 percent, from \$54 to \$187, between 1969 and 1979. Schools serving racial minorities raised tuition faster and to higher levels because they lacked the parish membership necessary to provide the kind of subsidies that permitted parish schools their traditionally low tuitions. Catholic parish schools serving minorities have average tuition and fees closer to \$450; Lutherans report similar tuition increases.

Minorities, it would seem, should be increasingly priced out of the private schools, not enrolling in record numbers. Pricing mechanisms are not absolutely effective in blocking attendance of lower-income students at private schools. Minorities are increasing enrollments because of the efforts of the private schools and because minority parents are willing to spend a greater portion of their income on education—for private school tuition—than the average family. Public policies have in no way aided the movement. To the contrary, these policies have impeded the movement.

National statistics on the family income of students in private schools show that students from lower-income families do not have as much access to private schools as those from middle-income and upper-income families. These national statistics are not as revealing as they might seem, for the reason I have already mentioned: a disproportionate percentage of lower-income students and minorities live in the rural South, where there are fewer private schools.

Are minorities priced out in areas where private schools are

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relatively evenly available to all? In the Northeast, private schools account for 20 percent of all schools; and, because they tend to be smaller than public schools, they account for 14 percent of all students. The statistics show both that the use of private schools is surprisingly evenly distributed among all income categories, and that poorer students are priced out of the schools to some extent. Students from median-income families are almost half-again as likely to attend private schools, and students from wealthier almost twice as likely to do so.

Table 2  
K-12 ENROLLMENT IN NORTHEASTERN PRIVATE SCHOOLS,  
BY FAMILY INCOME, 1975

<u>Family Income</u>	<u>Total Enrollment</u> (in 1,000s)	<u>Private School Enrollment</u> (in 1,000s)	<u>% of Families in Private Schools</u>	<u>% of Private School Enrollment</u>
Under \$5,000	842	58	7%	4%
\$5 - 9,999	1,862	189	10%	12%
\$10 - 14,999	2,235	259	12%	17%
\$15 - 19,999	2,214	329	15%	22%
\$20 - 29,999	2,529	431	17%	28%
\$30,000 or more	<u>1,220</u>	<u>253</u>	<u>21%</u>	<u>17%</u>
TOTALS	10,902	1,519	14%	100%

Source: Survey of Income and Education, 1976: Bureau of Census Special Tabulation, Congressional Record, May 20, 1978, May 20, 1978, pp. S4156-S4162.

Private schools serving large numbers of lower-income students are typically sponsored by parishes or congregations, which spread the cost of providing education across their local church membership. In the past, many churches were able to eliminate tuition entirely and subsidize the school from church contributions.

But in the past fifteen years, as neighborhoods have changed, parishes—especially inner-city parishes—have found non-church members enrolling their children in the parish school, but not becoming members of the parish church. These parishes have not been able to maintain their level of subsidy of their schools, which have had to increase tuitions. In the private school systems serving the largest portions of lower-income students, the highest tuition burdens in the system are in the lowest-income areas. Tuition costs here can range from 10 percent to 20 percent of family income for the lowest-income families. Despite this trend, minority enrollments have increased in the private schools serving lower-income families. As we will see, however, federal policies have made financing schools serving lower-income families more difficult and have discouraged, rather than encouraged, the integration of these schools.

#### MINORITY ENROLLMENTS: THE RECORD OF THE PRIVATE SYSTEMS

The racial enrollment statistics I have used so far (Table 1) vastly understate the actual minority enrollments in private schools by leaving out Hispanics and recent European immigrants. Because of the way the census data has been collected, it is not possible to discuss the enrollments of Hispanics or Eastern European immigrants simultaneously with those of blacks and other racial minorities.

We can get a better idea of total minority enrollments in private schools by looking at the statistics collected by the private system. Unfortunately, no system reports any information on European or other immigrant minority enrollments.

Between 1970 and 1979, Catholic elementary schools increased their minority enrollments from 11 percent to almost 20 percent, and Catholic secondary schools went from 8 percent to almost 15 percent minority. Catholic elementary schools have an 8.4 percent Hispanic-surnamed population. The total is undercounted because it does not fully reflect dramatic increases in Hispanic enrollments in several Eastern seaboard cities.

In the West, Catholic schools often enroll higher percentages of minorities than the public systems. In California, for example, minorities made up 44 percent of Catholic school enrollments, but only 41 percent of public enrollments.

The Lutheran Church-Missouri Synod, has reported comparably high concentrations of minorities in its schools. In 1978, its elementary schools were 12.5 percent minority (most of them non-Lutheran) and its high schools were 16.3 percent minority (14 percent black), a slightly higher proportion of blacks than in the high school population nationally.

Table 3  
CATHOLIC SCHOOL ENROLLMENT, BY ETHNICITY

<u>Elementary</u>	1970-71		1979-80	
	<u>Number</u>	<u>%</u>	<u>Number</u>	<u>%</u>
American Indian	18,023	.5	7,600	.3
Black American	171,991	5.1	195,600	8.5
Asian American	18,240	.5	44,700	2.0
Spanish-surnamed	177,917	5.3	193,000	8.4
All others	2,969,307	88.6	1,852,100	80.8
	<u>3,355,478</u>	<u>100%</u>	<u>2,293,000</u>	<u>100%</u>
 <u>Secondary</u>				
American Indian	2,438	.2	2,400	.3
Black American	37,447	3.7	53,400	6.3
Asian American	5,219	.5	12,200	1.4
Spanish-surnamed	38,643	3.8	55,500	6.6
All others	924,341	91.8	722,500	85.4
	<u>1,008,088</u>	<u>100%</u>	<u>846,000</u>	<u>100%</u>

Source: National Catholic Education Association Data Bank.

The growing importance of private schools to minorities is most dramatically evident in the statistics for selected private systems serving cities with large minority populations. In several Catholic systems, the portion of the schools within the central city boundaries are approaching or have surpassed 50 percent minority enrollments. For example, in New York City, the elementary schools of the Archdiocese of New York (serving the Bronx, Manhattan and Staten Island) are 53.2 percent minority and the high schools 33 percent minority. The percentages would be higher were it not for the effect of near-white Staten Island. The archdiocese's Manhattan elementary schools, for example, were 79.1 percent minority. The Brooklyn diocesan schools, which serve Brooklyn and Queens, have lower proportions of minorities (as do those boroughs), but their elementary minority have been increasing and have reached 34 percent--18 percent Hispanic and 16 percent black. And minority enrollments have increased in absolute numbers even though the Catholic system has closed 28 schools since 1972.

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Table 4  
ETHNIC ENROLLMENTS IN NEW YORK CITY CATHOLIC  
SCHOOLS, 1979-80

	<u>Elementary</u>		<u>Secondary</u>	
American Indian	75	.1	19	.1
Asiatic	2,601	4.0	507	1.8
Black (non-Hispanic)	11,392	17.5	3,035	10.5
Hispanic	20,506	31.6	5,802	20.0
White (non-Hispanic)	<u>30,406</u>	<u>46.8</u>	<u>19,630</u>	<u>67.7</u>
TOTALS	64,980	100%	28,998	100%

Source: Unpublished tabulations, Archdiocese of New York City Catholic Schools.

The Catholic schools of Chicago have experienced similar concentrations of minority students. Chicago's Catholic Elementary schools are now 46.4 percent minority, and secondary schools are 30.5 percent minority.

Table 5  
ETHNIC ENROLLMENTS IN CHICAGO CATHOLIC SCHOOLS,  
1979-80

	<u>Elementary</u>		<u>Secondary</u>	
American Indian	64	.1	59	.2
Asiatic	2,584	3.2	481	1.4
Black (non-Hispanic)	22,469	27.5	5,888	16.9
Hispanic	12,723	15.6	4,175	12.0
White (non-Hispanic)	<u>43,772</u>	<u>53.6</u>	<u>24,189</u>	<u>69.5</u>
TOTALS	81,612	100%	34,792	100%

Source: Unpublished tabulations, Archdiocese of Chicago Catholic Schools.

The San Francisco Catholic elementary schools are 61.2 percent minority and 20 percent non-Catholic; the secondary schools, 43.3 percent minority.



Table 6  
ETHNIC ENROLLMENTS IN SAN FRANCISCO CATHOLIC  
SCHOOLS, 1979-80

	<u>Elementary</u>		<u>Secondary</u>	
American Indian	42	.3	27	.4
Asiatic	3,640	26.2	998	14.4
Black (non-Hispanic)	1,440	10.4	506	7.3
Hispanic	3,015	21.7	1,282	18.5
Other non-white	361	2.6	187	2.7
White (non-Hispanic)	<u>5,390</u>	<u>38.8</u>	<u>3,929</u>	<u>56.7</u>
TOTALS	13,888	100%	6,929	100%

Source: Unpublished tabulations, Archdiocese of San Francisco Catholic Schools.

The Catholic secondary school statistics in these cities show lower minority enrollments for several reasons. First, secondary schools increase their minority enrollments gradually, several years after the minority students' initial enrollment in elementary schools, as these students move up the grade levels of the system. Second, tuitions at the secondary schools in these cities average at least twice the elementary school tuitions, but can be as much as five times as great. Tuitions in New York City, for example, average \$800. Third, and most interesting for those concerned with racial integration, private schools have established a reputation for superior performance that attracts white students back to schools, even those in racially changing neighborhoods. For instance, Cardinal Hayes High School which serves the South Bronx—a heavily Hispanic and black area of New York—has maintained a relatively stable 18 percent white enrollment for several years. In 1979, the school attracted 245 white students from areas as distant as middle-income and upper-middle-income Riverdale, Bronxville and Pelham Bay. It is not surprising that a school with a reputation for quality can hold or attract at least some white students, since that theory is the basis for magnet schools desegregation plans. At least in some instances, it is the private school's success at holding white students and remaining integrated that keeps down the percentage of minority students attending.

This is an important observation. Private schools as well as public schools can help a city to maintain an integrated population because they can hold racially mixed communities together. In a study of out-migrations from Seattle neighborhoods, Joseph Harris found that in neighborhoods under racial pressure, 36 percent of the public school families left for the suburbs during a three-year period, compared to only 6 percent of the Catholic school families.

## FEDERAL OBSTACLES TO PRIVATE SCHOOL INTEGRATION

The movement of minorities into private schools should lay to rest the belief that these schools are elitist and racial havens. Whatever they may have been once, they are not that now. No thanks to federal policies. While federal officials bemoan the impact of private schools on racial integration, the net effect of federal intervention has been to exacerbate their racial and economic isolation. Furthermore, it seems clear that the private schools are being chosen by minorities--especially those who are not members of the church operating the schools--because of the quality of the education available. The federal government has pursued a program of improving the educational opportunities available to minority children as a means of preventing the formation or perpetuation of a racial or ethnically based underclass. The federal government ought not to ignore for ideological reasons what many parents regard as the best education available to their children.

## Integration Aid Programs

The federal government bears a special burden for the racial segregation of private schools in Southern states whose segregation laws were forced on private schools by the 1907 Berea College case. Southern laws required private schools to segregate. Although private school systems in the South did not fall within the jurisdiction of Brown, most of them voluntarily desegregated. Many private systems--Lafayette, Louisiana; Mobile, Alabama; St. Louis, Missouri--desegregated on their own initiative, and before their companion public school systems obeyed court orders.

Having authorized the states to force integrated private schools to segregate, the federal government bears a special obligation to aid private schools' integration through programs assisting them in financing the enrollment of minority students. Since the First Amendment was not deemed to constitute a barrier shielding private, church-operated schools from the imposition of segregation upon them in the era of Jim Crow and the notorious "Black Codes," it is perverse to argue now that the First Amendment's prohibition against a governmental establishment of religion credibly prohibits the federal government from acting to repair the damage caused to these schools by state actions enforced by judgments in federal courts.

The posture of the federal Department of Education in 1980, however, shows an extraordinary indifference to the integration problems of private schools. Despite the concern expressed by numerous officials in that Department that private schools cause desegregation problems, the Department currently neither manages nor advocates any programs that would aid or encourage private schools to integrate. The Department provides direct assistance to

public schools through its regional race and sex desegregation assistance centers and through the Emergency School Assistance Act (ESAA). The desegregation assistance centers provide schools with technical assistance to handle problems of civil rights compliance, and ESAA provides federal funds to public school districts that are under court orders to desegregate or that are adopting voluntary plans to overcome the problems of segregation.

Federal laws mandate that private school students be served in these programs with services equivalent to those given public school students. The Department of Education's implementing regulations (called EDGAR, an acronym for Education Department General Administrative Regulations) spell out this requirement in considerable detail. EDGAR states that federally funded services shall be given to private school students by the "subgrantee" (typically the public school system), in the amounts consistent with their number and need; that the private school students be selected for receiving services on the same basis as the public school students; that they receive the same services where their needs are the same and different services where their specific needs differ. However, the regulation likewise provides:

- (a) A subgrantee may not use program funds to finance the existing level of instruction in a private school or to otherwise benefit the private school; (b) The subgrantee shall use program funds to meet the specific needs of students enrolled in private schools rather than--
- (1) The needs of a private school; or
  - (2) The general needs of the students enrolled in a private school.

These regulations were principally designed to meet the major problems of the Title I program authorized under the Elementary and Secondary Education Act (ESEA), a program that disburses services to students to overcome reading and other academic problems.

ESAA grants and technical assistance are to help school systems integrate. The programs incidentally may provide services to students, but only in the context of a plan that relates services to the problems of segregation or to desegregation efforts. Only public schools can apply for the ESAA funds, and under current regulations, only public schools can receive federally funded technical assistance for desegregation. But the public school must include private school students in any services it develops to overcome racial imbalance.

So far as I have been able to determine, ESAA-funded services have not been used to help private schools eliminate what they determine to be their integration problems. The services must be selected to meet the public school problems. In fact, one could interpret EDGAR to prohibit any effort to remedy private school segregation problems directly, since any federal funds used in the

effort would be serving the "needs of the private school," and this is prohibited. This leads to absurd situations in which the planning for the integration of private schools can be federally assisted only when public schools claim that the private schools must develop such plans for the success of the public school program.

The Department of Education has not systematically monitored the ESAA program to ensure that private school students are appropriately served. So we can describe how the program is being carried out only on the basis of reports from various public and private school officials. They all suggest that there is widespread participation of private school students in ESAA programs, that the students receive services analogous to the Title I services, but that the schools themselves receive no assistance in helping them define, confront, or remedy problems they may have with segregation or with multi-racial student communities. And it appears that even this limited amount of assistance was eliminated in the last year of the Carter administration.

ESAA regulations were strengthened in 1978 (effective 1980), to require clearer connections between federal assistance and desegregation efforts. As a consequence the Department of Education refused to renew grants to a number of public districts, either totally or in the private school components of their proposals, because these districts failed to tie their private school efforts to desegregation plans. This is a kind of Catch-22, since any genuinely effective desegregation effort must be concerned with schools as entities, and not simply with students as individuals needing help. But most federal officials interpret EDGAR and the ESAA program regulations to prohibit any direct aid or assistance which would serve directly the needs of private schools as entities. The only way out under existing regulations is for public schools to take responsibility, in their federal proposals, for private school integration; but this makes public schools responsible for something that only private schools can accomplish.

This tightening of regulations has proven costly to private schools and to the racial integration ESAA has attempted to foster. In the summer of 1980, for example, a large number of private schools that had been receiving ESAA funded services for students were eliminated from the program without warning. Again, no tally is available of the number eliminated, but there are many examples. In California, for instance, the private schools of San Diego, San Bernardino, San Jose, Stockton, and San Francisco were all eliminated from the ESAA program. For some systems the loss was considerable. San Diego private schools, with their large Hispanic enrollments, lost \$350,000 worth of educational assistance because the public school proposal was judged inadequate. In practice, this means that a school like John F. Kennedy Memorial School (Catholic) in San Francisco will no longer receive programs in intercultural relations for its diverse student enrollment, which is approximately one-third Hispanic, one-third white, and one-third

black and Asiatic.

More serious still, because it is self-defeating, is the failure of the Department of Education to deliver any technical assistance to private schools (so far as I have been able to determine) despite the fact that court-ordered plans to desegregate public schools in several communities (Boston, Cleveland, Los Angeles, Houston) have embroiled private schools in desegregation conflicts. The federally funded desegregation assistance centers (which received \$55 million in fiscal year 1981) act as troubleshooters for the local schools moving through desegregation plans. But these centers recognize no responsibility for helping private schools plan the best possible strategy for aiding the desegregation process, even though private school cooperation is manifestly necessary to the success of any public school plan, and despite the fact that private schools are indirectly affected by the court orders or by public school efforts. The private schools are affected indirectly, first, by becoming subject to at least the threat of "white flight," a threat that will increase in magnitude as the federal government ties suburban and central districts together in its desegregation cases. Second, they are affected, at least potentially, by their remaining as neighborhood schools (and therefore more likely of a single race) after the public schools have become more integrated regional schools. They get a reputation for segregating that they do not actively earn.

The private schools are also directly important to any successful efforts to integrate education, because—especially in the country's largest cities—they educate a large portion of the students. Over 25 percent of New York City's students, 40 percent of Boston's, and 50 percent of Albany's students are enrolled in private schools. The point is not "if only all these students were in the public schools, public schools would be integrated." That reasoning ignores both the extent of minority presence in urban private schools (which is greater in private schools than in public schools in a number of cities) and the pattern of mobility of white students in urban areas, which has been to leave city public schools not for city private schools, but for suburban public schools. The point is that it is irresponsible and unrealistic to aid the integration efforts only of public schools and to ignore the impact of nonpublic schools on desegregation efforts.

The regulations guiding the applications of ESAA and the technical desegregation assistance to private schools need to be reinterpreted. The programs are designed to encourage voluntary desegregation efforts, and so fit well the needs of private schools which, ultimately, can only encourage and not order desegregation efforts on their parents and students. But, as applied, they provide no help to private schools whatsoever. It is important that public and private schools coordinate their planning and efforts in confronting segregation problems to the extent possible, but the present approach of handing the entire problem, responsibility and resources

over to the public school, does not encourage cooperation or solutions. EDGAR need not present the insurmountable obstacle many believe it is. It, after all, only prohibits the use of federal funds "for the benefit of the private schools." It is reasonable to argue that assistance specifically designed to aid the private schools integrate is not aid for what is on their own private agenda, but aid for a public purpose, to encourage them to adopt as their own the public goal of integration. Neither ESAA aid nor the technical desegregation assistance, when given to private schools, would turn public money over to private purposes.

The implications of my argument are that the federal government should directly aid private schools to integrate, and to coordinate their efforts with public schools in the face of court-ordered desegregation plans. In fairness, however, I must acknowledge that there is one way in which things are better as they are. Private schools are not currently subject to any of the federal regulations public schools must follow as a result of accepting federal money. Private schools may well be drawn into the same morass of rules, and these would be even worse for them because the rules have already been worked out to fit the characteristics of public systems, without regard for the distinct character of private schools. Put another way, it is increasingly difficult for the federal government to offer any pure incentive programs, because all come freighted with a growing burden of regulations.

#### FEDERAL DISINCENTIVES TO INTEGRATION

There is a way out. The federal government has in its control an effective incentive system which does not enmesh private institutions (or at least has not so far) in the labyrinth of regulations guiding public schools: the tax system. Unfortunately, however, the tax system has become—so far as the integration of education is concerned—a perverse incentive. Through its policies governing tax deductions, the federal government heavily subsidizes public schools in exclusive suburban districts, and it heavily penalizes middle-income and wealthier families that decide to use the integrated city private schools. Most amazingly, it strongly penalizes private schools that attempt to integrate their enrollment by offering scholarships to lower-income and minority students. The remainder of this essay examines in detail how the federal government provides these subsidies and penalties.

First, the entire operating expense of local government—including local schools—is raised by state and local taxes and is deductible from personal income subject to federal taxation. Second, this deduction is, in effect, a federal subsidy of local expenditures. Third, in places where the average family income is relatively high, the average tax bracket is higher; consequently, the value of the average deduction is greater. Fourth, as a result, affluent suburbs receive a far greater per capita subsidy from the

federal government than do central cities, and this federal aid covers a far greater proportion of all local expenditures in these wealthy areas. Fifth, public school aid through the tax system far exceeds direct programmatic aid that the federal government gives to support education.

In 1980, state and local governments raised over \$100 billion to support the operations of their public schools. The federal government refunds a portion of this tax burden to state and local taxpayers—at least to those whose incomes are high enough to permit them to itemize deductions on their federal income tax returns. By deducting state and local school taxes, taxpayers reduce their federal tax obligation. In effect, the federal government takes on some of the burden of paying for local schools (and for other local services). The system of tax deductions for local school expenses amounts to a transfer payment from the federal government to the local school district via the income tax system. The higher the median income of a school district's residents, the higher their median tax bracket, the more valuable the tax deduction to them, and the greater the amount of the federal reimbursement of the local school budget.

An exact calculation of the cost of this program to the federal government is impossible because public school systems do not generally report data on the income range of the population they serve. I believe that a cost estimate of \$30 billion is in the ballpark. This is four times the total of the federal education budget (about \$7 billion in FY 1981), which makes the tax refund device a much more important federal program in aid of education than its program of direct grants. Unfortunately, although the program of direct grants is modestly skewed to aid lower income areas, the tax refund program is heavily skewed in favor of the wealthiest communities.

The net effect of federal intervention in education is to subsidize the wealthiest families in the most economically and racially segregated schools far more than the families using the poorer and predominantly minority schools in central cities. For example, Pocantico Hills, a Westchester County suburb of New York City, operates only elementary schools and spent \$10,000 per pupil in 1979-80, compared with New York City's approximately \$2,700 per pupil for its elementary schools. The median income in Pocantico Hills was twice that of New York City in 1970 and the difference has probably increased since then.

The IRS does not report income tax data for communities, so we are forced to make some assumptions about the tax brackets of the average taxpayers in New York City and Pocantico Hills in order to estimate the comparative value of federal aid to these cities through deductions of local taxes that support their schools. And in calculating the value of aid through the tax system to public schools, we must first determine the portion of per pupil expenditure in the school system raised through taxes at the local and state

levels, because only this portion of the school bill becomes a deduction from the income tax obligations of the school district's residents. Federal aid to the district is not paid for out of local taxes and, therefore, is not a deduction from federal tax obligations. To calculate the actual federal tax aid to a district, we must subtract the value of federal educational assistance to the local public school district from its per pupil expenditure.

Next, we must determine the average tax bracket of the school district's residents, since the value of the deduction of local school taxes varies according to the taxpayer's bracket. For example, if a taxpayer is in the 25 percent bracket, an increase in local school taxes of \$1,000 means a reduction of federal taxes by a little more than \$250. The taxpayer has to come up with 75 percent of the new taxes because the federal government, in effect, shares the cost of the taxation by lowering its own tax bill. If the taxpayer falls into the 50 percent bracket, his or her federal taxes are reduced by a little more than \$500.

State and local income taxes follow the federal regulations on these deductions, so the amount of local school taxes paid for through tax deductions is correspondingly greater. For those in the 50 percent tax bracket who live in New York State and work in New York City, the deduction is worth almost 70 percent of the local tax obligation. In other words, when a local government increases taxes by \$1,000, these high-bracket taxpayers effectively pay only \$300 in additional taxes. The other \$700 that comes to the local system is, in effect, a transfer payment from local, state, and federal governments to the taxpayer's school system.

For New York City, whose population is at about the national average tax bracket, and Pocantico Hills, the amount of aid through these tax benefits can be reasonably estimated by multiplying the median tax bracket for the community by each school district's per pupil expenditure, less federal programmatic aid (since federal aid is not raised by local or state taxes and is not therefore a deduction on federal income tax obligation.) For our two systems, we find the following results.

For New York City.

Aid to the city from the federal government through the tax system alone equals about \$464 in 1979. When the total value per pupil of federal programmatic aid is added, the total approaches \$800. These amounts are calculated first by establishing the tax bracket for the median income in the city. In 1975, the last year for which census figures are available, median income was \$13,459, placing the average resident at the 16 percent tax bracket. Because of the effects of inflation, both median income and tax bracket have increased since that date, so these calculations are conservative. Next we establish the total expenditure for schools, less the federal contribution, per pupil. In 1979, this amounted to approximately



**\$3.2 billion total, less \$.3 billion federal aid, serving approximately 1 million students, for a per pupil expenditure from local and state funds (and therefore deductible from federal tax obligations) of \$2,900. At the 15 percent tax bracket, the federal government rebates—or pays—\$464 of this bill.**

Unfortunately for New York, the city does not actually receive the benefits of this subsidy through the tax system. The IRS estimates that close to 90 percent of New York City residents take the standard deduction (form 1040A) in which they do not itemize local taxes as a deduction, and do not receive any federal tax break from increases in local taxes. Thus the residents of the city get almost none of the tax system aid that we have described here. Virtually all federal benefits to the city come from the federal programmatic aid.

#### **For Pocantico Hills.**

Aid to the district through the federal and state tax systems amount to almost \$7,500 per pupil. There is virtually no increase due to federal programmatic aid, since the district is too wealthy to be eligible for most federal aid programs. For Pocantico Hills, the amounts are calculated by establishing that the median family income in 1975 (based upon an extrapolation from the 1970 census) was approximately \$50,000, and the combined federal state and local income tax bracket was 75 percent. The system's per pupil expenditure—based upon gross expenditures of \$3.6 million, less federal aid of \$800, serving the needs of 360 students—equals approximately \$10,000 each. At the 75 percent tax bracket, this amounts to a federal and state transfer payment to the local schools of about \$7,500. The federal portion of this would be about \$5,000 per pupil. Of course, few wealthy families actually pay taxes at the 75 percent rate (which is the rate "on the last dollars earned", not on total income); but the reason they do not is because of tax deductions like those for these exclusive schools. Through the tax system, Pocantico Hills receives at least 10 times more aid per pupil from the federal government than does New York City. After crediting New York City with the programmatic aid it receives from the federal government, we find that Washington still gives Pocantico Hills almost seven times more aid per pupil than New York. So Pocantico Hills is quite attractive to anyone who can afford to move into its district, including the wealthiest families leaving the city.

#### **TAX DISINCENTIVES FOR USING PRIVATE SCHOOLS**

Upper income New Yorkers are most likely to enroll their children in religiously affiliated or independent private schools, schools that charge high tuitions because they are not supported by a church, foundation, or other outside source. Tuitions range from \$2,000 per

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year to \$6,000, with an average charge of about \$3,000. In addition, parents must pay for school bus transportation and other services normally borne by local governments or public school systems. The present tax system effectively doubles and triples these costs.

The amount of the penalty the tax system imposes varies according to the federal, state and local income tax brackets into which the family's income falls. Representative federal tax brackets in 1980 for a married couple filing jointly are shown in Table 7.

Table 7  
REPRESENTATIVE FEDERAL INCOME TAX BRACKETS FOR  
SELECTED PERSONAL INCOMES, 1980

Taxable Income (in thousands)	Tax Bracket
\$ 8-12	22%
16-20	28
24-28	36
32-36	42
40-44	48
52-64	53
76-88	58
100-120	62
140-160	66
180-200	69

As a rule, state and city taxes average one-third of federal taxes for New York. For the sake of clarity, let us take an extreme example, that of a family with a very high income. The line of argument, however, applies to all tax levels. A New York City family with a taxable income of \$45,000 is in the 50 percent federal tax bracket. In addition, it is at approximately the 17 percent state and local bracket. After paying taxes (\$14,700 federal and \$4,500 state and local) the family has \$24,800 remaining to pay non-deductible living expenses such as food, clothing, rent, and tuition to private schools. Tuition and expenses related to education for two children in private schools in the city would average about \$8,000 per year, approximately one-third of the family's after-tax income, leaving it with \$16,800 for other expenses. Clearly, using private schools requires a deep commitment to living in the city, since nearby public schools in the suburbs often have a reputation for comparable or better quality.

If expenses for education were deductible, as they would be if they were simply business expenses or religious contributions, the impact on the family would be quite different. A \$8,000 deduction from a taxable income of \$45,000 would bring the family income down two tax brackets. It would pay \$10,800 federal and \$4,200

state and local taxes on its \$37,000 taxable income. After all taxes and education expenses were paid, the family would be left with \$22,000 or \$5,200 more than it has today, without the tax deduction, for other expenses. If educational expenses were tax deductible, the cost of private education to this family would be cut by 65 percent.

Consider once again, but from a different angle, the present situation in which educational expenses cannot be deducted. How much must the upper-income family earn in order to pay \$8,000 per year in private education expenses? In its tax bracket, it would have to earn \$24,000 in order to cover the \$8,000 private-school expenditure (assuming the \$24,000 income is "earned income" and subject to a maximum federal tax of 50 percent and corresponding maximum state taxes). The federal, state, and local governments would be taking \$2 for every \$1 the family spent to educate its children in private school.

Our examples have substantially understated the economic incentives for the family to move from the city. The commitment to a private school is not a one-year commitment, but stretches out over 12 to 15 years of nursery, elementary, and high school. Tax consultants estimate the out-of-pocket expenses of a family using only private schools to be in the range of \$40,000 to \$60,000 per child, or \$120,000 to \$180,000 of pretax, earned income--if the education expenses cannot be deducted. If a family with two children remained in the city, the family would have to spend \$250,000 to \$333,000 of its earnings for education in private schools.

At present, the alternatives are remarkably attractive. The same family could move to an exclusive suburban school district and invest in a home--a capital investment--the money it would have spent on private schools in the city. The home investment would produce tax deductions that allow the family to shelter a substantial portion of the \$250,000 to \$333,000 it has available to invest over the 15 years or so its children are in tuition-free public schools. Moreover, the family's suburban home will probably appreciate in value in that time.

In the suburb, the family can enroll both children in public schools, paying only the taxes on its property. Property taxes are a function of local tax rates and of the assessed value of the property and so cannot readily be projected. Let us assume that the family pays \$3,000 per year in property taxes. Of this, 60 percent to 80 percent would be assignable to the costs of the public schools, or about \$2,400 for both children. This amount would be deductible from the family's taxable income, lowering its tax bracket and saving it about \$1,600 in taxes. Thus, the real cost to the family of the suburban public school education would be about \$800, or \$400 per child.

In summary, under the present tax system, the family must spend \$24,000 of its gross income to remain in the city and use private schools, or \$800 of gross income (which is the additional tax obligation the family must meet in the suburbs after federal

deductions are accounted for) in the suburban public system. I observed above that the statistics describing the enrollment in private schools by family income show that lower-income families are priced out of private schools as a consequence of their economic circumstances (see Table 2). The tax deduction laws exacerbate the difficulties that lower-income families experience in paying private school tuition because they effectively increase the amount of money the family must earn in order to pay it. Thus, the tax policy reduces the number of minorities able to pay private school tuition and encourages the segregation of the system. Existing policies also tend to discourage the use of private schools by upper-income parents since the effective cost of education in a private school for these families is several times the nominal tuition.

This might suggest, on balance, that the tax system has a benign influence on the tendency of wealthy families to separate their children from poorer or minority children. However, that inference is not correct because the typical alternative for a high-income family is not the heterogeneous urban public school, but the homogeneous, elite public school. Because the income statistics on public school enrollments have not been available on a district-by-district, much less a school-by-school basis, the extent of economic and racial isolation that exists within public schools has been hidden. In private schools, as we have seen, some efforts are made to integrate the student population both racially and economically. Hence, the existing tax system encourages upper-income families to place their children in racially and economically isolated suburban public schools. The effect is also to limit the number of lower-income children in private schools. However, the system has a stronger discouraging effect on upper-income families, and therefore tends to make private schools more economically integrated, statistically speaking, than they would be if only market forces operated.

We cannot simply assume, however, that private schools would let market forces change their socio-economic mix of students. Lower-income students in private schools are subsidized by the school or by a sponsor. They are present in private schools because the schools have adopted policies that oppose market forces. The existing tax system takes a neutral or hostile position toward these policies. The IRS has proposed changes in tax regulations--now being argued in court--to make the policy even more hostile.

The two principal types of subsidy to low-income students in private schools are (1) subsidy to the school organization as a whole, which permits a lowering or elimination of tuition; and (2) subsidy to individual families or students in the form of scholarship aid. Some schools follow both policies. Typically, scholarship aid is funded from a school's general revenues, including tuition income. Existing tax regulations prohibit the deduction of any portion of the tuition payment, even the portion supporting the scholarships of lower-income and minority students. Thus, existing tax regulations make

it more difficult for private schools to offer scholarships when the scholarship expenses are paid by tuition. Frequently private schools are subsidized by churches, and this subsidy enables them to enroll lower-income and minority students with only minimal scholarship aid. The churches, in turn, are supported by contributions from parishioners, including parents. These contributions are the church's version of the local taxes supporting the public schools. The IRS has recently proposed rules that deny parents the deductions of contributions to churches if they enroll their children in a church school subsidized by the parish on the ground that these contributions are a form of tuition. The proposal would make the church subsidy even more difficult. If the change were enforced, it would tend to limit the practice of parish subsidy to schools and the ability of schools to maintain tuitions low enough to enroll children of the poor.

I am not proposing that we should remove the effects of taxation in shaping public and private schools, but we should observe the kinds of schools that are being shaped by existing policies. Current taxation policy (1) provides far more aid to the wealthy than to the poor; (2) encourages the segregation not only of metropolitan areas, but of both urban and suburban public and private schools; (3) further discourages lower-income children from attending private schools; and (4) makes it harder for the private schools to offer scholarships. Taxation has integrating and segregating effects, which should be controlled to advance the national ideal of racially and economically integrated schools. The pursuit of this goal in both public and private schools would not entail great cost, but it would provide an important benefit for American society.

## 11. Federal Scholarships for Private Elementary and Secondary Education

Stephen D. Sugarman and John E. Coons

### INTRODUCTION

Through the Basic Educational Opportunity Grant Program (BEOG) the federal government provides means-tested grants that help students pay for the costs of higher education.<sup>1</sup> At present the grants vary in amount from \$200 to \$1800 per year depending upon the student's need as defined in the statute. New York Senator Daniel Patrick Moynihan has proposed that the benefits of the BEOG plan be extended to elementary and secondary education.<sup>2</sup>

Although Moynihan has for some time advocated that government provide financial support to users of private elementary and secondary schools, previously his efforts have focused on an income tax credit plan.<sup>3</sup> Despite widespread support, the education tax credit idea has so far been unable to win congressional approval. Apart from general objections to providing federal aid to private school users, critics of the tax credit plan have opposed it on distributional equity grounds, claiming that its benefits will go mainly to non-poor families. They have also argued that its application to users of religious schools would be an unconstitutional violation of the First Amendment's Establishment Clause. Further, some have objected to having the Internal Revenue Service administer what in effect could become a very large aid to education program.

Whatever the merits of these three criticisms, Moynihan's new proposal—quickly dubbed "baby-BEOG"—can be seen as a response to all of them. The grant program would be run by the Department of Education. The fact that it would be combined with aid to higher education is thought by some to aid its constitutionality. Most important, it is aimed at the working class and the poor.

We will not consider here the agency competence (or rivalry) issue. There may be good practical or political reasons to prefer one department over the other, but we leave that debate to others.

Our discussion of the effect of including college students is postponed to the end. Stated succinctly, our position is that we do not think that combining federal aid to users of higher and lower education in one program is either helpful to or necessary to the constitutionality of support to families choosing religious primary and secondary schools.

For us the most exciting aspect of the baby-BEOG scheme is its targeting of aid on the non-rich. We too have opposed Moynihan's tax credit plan, as well as Milton Friedman's voucher scheme<sup>4</sup>, on

the ground that they don't do enough for those who most need new options in education--lower income families and the very poor. What is so stimulating about the new Moynihan initiative is its responsiveness to the educational aspirations of those typically worst served by today's public schools. By focusing financial assistance on low income families, the baby-BEOG proposal forcefully counters critics of tax credits and some voucher plans who see government aid to private school users as stimulating increased economic class separation in education. Moreover, as only non-rich families would be assisted by baby BEOG, there would be less reason to insist (as we have in the case of voucher or tax credit schemes) that tuition limits and enrollment controls be included to assure the poor equal access rights.<sup>5</sup> At the same time the baby-BEOG idea has the political attraction of not returning tax dollars to reasonably well off and wealthy families already paying for private education.

Although its initial congressional reception was cool,<sup>6</sup> the baby-BEOG plan is by no means a dead letter. Indeed, as conservatives renew their push for tax credits, liberals who have opposed all proposals to aid private school users may turn to the baby-BEOG as a compromise and, indeed, as a substantial boon to their primary constituents. In short, future debate about aid to users of private elementary and secondary education could well center on federal scholarships for private elementary and secondary education.

We will not here dwell on the basic arguments for financially aiding families who enroll their children in private schools. Elsewhere we have argued at length about the merits of increasing family choice in education.<sup>7</sup> We do wish to emphasize that our main concern has been and continues to be the child now badly served by the public schools. We want that child's family to have the financial backing to make a credible threat to those schools: do better by our child or we will take our business elsewhere. Working class and poor families by and large cannot make such demands today; but with the right baby-BEOG plan, they could. Most importantly, giving these families economic power promises to provide the competition that can revitalize public education. Most families, we assume, will remain in public schools--but now as consumers by choice. At the same time non-rich families who prefer private education will be able to make that choice for their children. Reducing the economic burden now shouldered by low income families already enrolled in private schools, although a desirable side effect, is not the fundamental objective.<sup>8</sup>

This essay, in any event, has narrower concerns. Although Senator Moynihan's overall concept is excellent, the implementing features proposed so far are a bit simplistic. The details of the college BEOG plan do not fit well the needs of lower education--whatever their merit in higher education. Our central purpose here is to propose and defend somewhat different para-

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meters for the baby-BEOG scheme.

## DETERMINING NEED

The core idea of baby-BEOG is to provide need-based scholarships to children attending private elementary and secondary schools. Assume that this has been decided in principle. Who, then, should get the scholarships, and for how many dollars? One start on the problem might be to decide which children are poor—perhaps all those living at or below the official poverty level—and then simply offer to pay the full costs of their private schooling. There would be a number of serious problems with such a tactic.

First, need for assistance with school costs is neither restricted to children living in poverty, nor does need sharply cut off at any specific income level. Thus to have an all or nothing rule for benefits creates both substantial injustice and work disincentives. In short, for a worker to earn \$100 more than the poverty level and as a result have his child lose a scholarship worth far more than that is bad policy. The scholarship amount, like food stamps, should phase out as family income increases. The present college BEOG program adopts this approach; its phase-out rate may not be appropriate for elementary and secondary education, however, as we will see.

Second, a scholarship award for the full cost of schooling gives the eligible family a powerful reason to select the most expensive school. Putting a ceiling on the amount of the scholarship is one possible response to this pressure. But if the limit isn't generous, many desired schools will be out of the reach of the poorest families, thus defeating a central purpose of the plan. Further, a limit simply encourages the family to select a school at that limit rather than to "shop for price." A full scholarship scheme also runs the risk of having the family feel that it has less invested in the choice it has made for its child than it might feel if at least some of its own cash is on the line. The folk wisdom that things that are free aren't worth so much to you, and that you're more likely to demand good performance from something that you've put your money into, has a ring of truth to it. Together this second set of concerns argues for a matching plan that combines a family contribution with the scholarship to pay for the cost of the school. BEOG's matching arrangements, we will argue, are inappropriate for baby-BEOG.

The analysis thus far gives us two general principles to be used in awarding scholarships: (1) Even the poorest family should make some (even token) financial contribution toward even the lowest cost school. (2) As either family income or school cost increases, so should the family's contribution.

Third, suppose now that family has more than one child in private school? How should that affect its total contribution? At least three alternatives are worth considering. (a) A single



contribution on behalf of the first child could suffice for the rest, or (b) each additional child in private school could impose on the family an obligation equal to that expected for the first child, or (c) a reduced contribution could be required for additional children. This is a difficult issue. On the one hand it can be argued that, in a needs-based program, once we have asked the family to contribute all it fairly ought to pay toward the education of its first child in private school, there will be no more money left that we can fairly ask to be contributed toward the education of the others. On the other it may be argued that it is only fair for a family to dip further into its funds (thus lowering its living standard) in order to send additional children to private schools; the additional government aid should be conditioned on additional family contributions. We lean toward the rule that one family payment serves for all its children. However, the BEOG program for higher education has adopted a compromise position calling for extra but reduced contributions for each additional child; to simplify discussion we will here accept that position for baby-BEOG.

Having described the principles, we must turn to the crucial details. At just what rate should the family's contribution increase as its income increases? At just what rate should the family contribution increase as its chosen school's costs increase? Just how much extra should a family contribute if it has more than one child in private school? What counts as income for these purposes? And how should accumulated family assets (wealth) be counted, if at all? We will address these issues from three perspectives: How has BEOG resolved them? In what respects are these solutions inappropriate for elementary and secondary schools? What parameters for baby-BEOG would be desirable?

#### HOW THE HIGHER EDUCATION BEOG WORKS TODAY

##### One child in college

Suppose a couple has one child and the child is about to attend college. Suppose further that the family has less than \$25,000 in assets and that the child's annual college expenses will exceed \$3600, two factors the importance of which will be explained in due course. Simplifying slightly, if the family's annual income, as defined in the statute, is in the range of 0 to \$5400, the child will be eligible for the maximum \$1800 grant.<sup>9</sup> As the family's income increases, the amount of the grant slowly declines until it reaches the minimum award level of \$200. The rate at which the student's grant declines is 10.5 cents for every extra dollar the family has in income above \$5400. For our hypothetical family the minimum grant level occurs once its income reaches about \$20,000. If family income is greater, the child is ineligible.<sup>10</sup>

The basic theory behind this grant formula is of course simple: the poorer the family, the higher the grant should be—because

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the family is less able itself to pay for the child's education. But the details require separate explanations.

First, why is the initial \$5400 in family income disregarded? BEOG adopts the idea that the amount the family ought to be able to contribute to its child's education depends on its discretionary income—its total income less an amount needed for the essential living expenses of the family members. In other words, until it meets its basic living expenses a family cannot contribute to college costs at all; and \$5400 is a subsistence amount assumed by the law to be reasonable for a family of three. Consistently, when there are additional children in the household, the \$5400 figure increases under the statute. Table 1 sets out the amounts for families with up to five children.

TABLE 1

### BEOG

#### DISREGARDED INCOME FOR BASIC LIVING EXPENSES

Number of Children (in Two-Parent Family)	Disregarded Income Amounts
1	\$ 5,400
2	\$ 6,850
3	\$ 8,050
4	\$ 9,150
5	\$10,100

For 1979-80. These numbers are adjusted over time. They are based on national low income family definitions which are somewhat greater than the official government poverty level. The disregarded income amounts are increased as the CPI increases.

Second, why does the student's grant phase out at the rate of 10.5 cents for each dollar of family income above the statutory disregard? This rate is the vector of a variety of competing considerations. Some would ask the family to put all of its income above the subsistence level towards its child's college education. This would call for a far more rapid grant phase-out rate—\$1 for each \$1 of income above subsistence. Others disagree and think it fair for low income families to have somewhat better net standards of living as their income rises. They would not ask families to contribute all of their discretionary income toward college costs.

In addition to fairness considerations, there are incentive concerns. If the family had to put all its discretionary income toward college costs in order for the child to have a chance to afford to attend, the family might refuse and the child would not

attend (or the child might feel too guilty to ask that much from his parents). But the congressional purpose behind BEOG is to stimulate children of low income families to pursue further schooling by reducing the financial barrier they might otherwise face. There are also the usual work disincentive concerns, suggested earlier, that arise with programs having rapid benefit phase-out rates--also called "high implicit tax rates." Put simply, what is the point of the parent earning a dollar more if it reduces the grant by an offsetting amount? Moreover, it must be remembered that BEOG is laid on top of other means-tested plans for which many BEOG families are eligible, thereby creating the risk of implicit marginal tax rates in excess of 100 percent.

A further consideration in deciding the grant phase-out rate is the distance up the income scale it is thought appropriate to provide financial assistance for school costs. If, for example, Congress decides that families with \$18,000 of income ought to get some help, then assuming an income disregard of only a subsistence amount, this necessarily implies a grant phase-out rate of very much less than 100 percent. In fact, the practical reason that the BEOG phase-out rate today is 10.5 percent instead of 20 to 30 percent, as it was originally set, is that Congress in 1978 decided to extend some benefits of the plan to so-called middle income families; and to do so it simply reduced the implicit tax rate.<sup>11</sup> This simultaneously, of course, improved the benefits provided to students in somewhat poorer families. As those who study means-tested programs know, the maximum grant amount, the phase-out rate, the amount of the income disregard and the "break even" level (the income level where benefits cease) are all interrelated so that any three of these parameters pretty much determine the fourth.

A final consideration relevant to setting the BEOG phase-out rate is one's view of the family's proper contribution when more than one of its children is in college. Plainly, if for the first child a 100 percent phase-out rate is applied, this leaves no room to imply a greater family contribution for additional children. By contrast, a modest phase-out rate such as BEOG employs makes it feasible to ask more from the family when an additional child attends college.

Third, why does BEOG provide a maximum grant of no more than \$1800? The short answer, of course, is that this limits federal cost. But, as we have seen, an alternate approach to cost reduction is to increase the grant phase-out rate. The \$1800 maximum, therefore, can be seen as representing a choice; for the same federal costs Congress provides at least some funds for middle income students rather than providing larger grants to poorer students.

In any event, since the fair family contribution plus the grant cannot under the statute exceed \$1800, the rest of the student's costs must be raised elsewhere. If the program intended the family to pay for these extra costs, this could alter dramatically our previous evaluation of BEOG's fair family contribution feature.

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However, Congress did not contemplate that the parents would pay the excess; rather it assumed that the money would come from any of a variety of other sources. These include the student's own work, perhaps through the federally subsidized work-study program; student borrowing, perhaps through the federal student loan programs; and scholarships and/or loans from the student's own chosen college. These are traditional and widely available sources of college student income that BEOG drafters presumably did not want to displace. Put differently, it was thought fair for poorer college students to have to win school scholarships, take out loans and/or work in order to complete the payment for higher education. BEOG implies a fair student contribution as well as a fair family contribution. Note also, unless a poor student receives an additional scholarship, the \$1800 limit plainly gives that student an incentive to attend an inexpensive college.

Fourth, a student's grant is limited not merely by the difference between the family's fair contribution and \$1800; in addition, the grant may be no greater than 50 percent of the student's educational costs. What is the purpose of this limit? Once more, limiting federal costs is not the only objective; rather, the half-cost rule symbolizes a federal role of junior partner with other sources. In practice, it serves primarily to cut the grants of the poorer students attending lower cost schools; this is because of the way the \$1800 maximum and the half-cost features (and a third limit) are linked.

Specifically, the BEOG grant is equal to the least amount among these three: (a) \$1800 minus the family's fair contribution, or (b) one half of the student's educational costs, or (c) the difference between school costs and the family's fair contribution. As a result, whenever costs exceed \$3600 all students must be impacted by the \$1800 limit before they run into the one half of educational costs limit. Similarly, the third limit does not operate when costs exceed \$3600. Since "costs" for BEOG purposes include both tuition, books and living expenses, it is thus obvious to anyone who has paid any attention to the cost of going to college that only the \$1800 maximum will be relevant in most cases; after all, in elite private schools tuition alone exceeds \$3600.

Nonetheless in some cases, when students attend public colleges with low or no tuition, they will feel the bite of the other limits. Notice, now, how the crunch is almost entirely reserved for the child from the very low income family. A student otherwise eligible for a \$1200 grant is impacted by the half cost rule only by attending a school costing \$2400 or less; a student otherwise eligible for a \$600 grant is impacted by the third limit only by attending a school costing \$1800 or less (the half-cost rule would only apply when costs were \$1200 or less and hence is inapplicable). Yet the bite of the half-cost rule applies to a student otherwise eligible for the maximum \$1800 grant as soon as his costs fall below \$3600.<sup>12</sup>

Putting aside now any objections to the specific BEOG limits, it should be clear that the limits together create the need for what we

have called the student's fair contribution—and do so in a way that causes the student to have a financial interest in the cost of the school attended. To sum up, Table 2 illustrates BEOG's operation for a variety of families with one child who is in college.

TABLE 2

## PAYING FOR COLLEGE COSTS IN FAMILIES WITH ONE CHILD

FAMILY INCOME		<u>School Costs</u>				
		<u>\$1200</u>	<u>\$1800</u>	<u>\$2400</u>	<u>\$3600</u>	<u>\$4800</u>
\$ 5,400	BEOG	600	900	1200	1800	1800
	Family Contribution	0	0	0	0	0
	Student Contribution	600	900	1200	1800	3000
\$10,000	BEOG	600	900	1200	1300	1300
	Family Contribution	500	500	500	500	500
	Student Contribution	100	400	700	1800	3000
\$15,000	BEOG	200	800	800	800	800
	Family Contribution	1000	1000	1000	1000	1000
	Student Contribution	0	0	600	1800	3000
\$20,000	BEOG	0	300	300	300	300
	Family Contribution	1200	1500	1500	1500	1500
	Student Contribution	0	0	600	1800	3000

## More Than One Child in College

Now suppose the family has two students in college. The BEOG drafters concluded that the fair family contribution is to be increased by 40 percent and that half of the total should be allocated to each of the children. In other words, instead of 10.5 percent, the family is now expected to contribute 14.7 percent of discretionary income, or 7.35 percent per child. Put more precisely, the grant for each is \$1800 less 7.35 percent of the family's discretionary income (subject to the two other limits already discussed). As suggested earlier, the idea is that while it is fair to ask the family to contribute something towards the second child's college costs, that contribution should be less than for the first child. This principle is carried out for additional children in college. Table 3 illustrates this feature.

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TABLE 3

## BEOG FAIR FAMILY CONTRIBUTIONS

<u># of Children in College</u>	<u>Fair Family Contribution/Child</u> (% of discretionary income)	<u>Total Fair Family Contribution</u> (% of discretionary income)
1	10.5	10.5
2	7.35	14.7
3	5.25	15.75
4 (or more)	4.2	16.8

## Some Additional Details

A few final BEOG features need to be explained.

(i) If the family has more than \$25,000 in qualifying assets, 5 percent of that extra is counted as available for contribution to the child's education. The student's grant thus is reduced by 5 percent of qualifying family assets over \$25,000. This is defended in part on the ground that all the income the family could earn from these assets though a simple savings account ought to be put toward college costs. House equity also counts for BEOG purposes. This may, in economic argot, represent the imputed rental value of home ownership; or maybe, more prosaically, it is assumed that housing costs for homeowners are less. In any event, in inflationary times the rule is important: a family with house equity of \$61,000 is disqualified from BEOG on that basis alone—even if its discretionary income is 0 and it has no other assets. Of course, not too long ago anyone with over \$60,000 in house equity was probably quite well-to-do. But in many parts of the country houses that were bought for \$10,000 now cost \$80,000—yet their occupants are far from rich.

(ii) Because of presumed work expenses, the amount that the family can subtract for basic living expenses is greater if both parents work.<sup>13</sup>

(iii) A smaller sum for basic living expenses is allowed when there is one instead of two parents in the household.<sup>14</sup>

(iv) Income for BEOG purposes is determined as follows. Take the family's (last year's) adjusted gross income for federal income tax purposes, and subtract its federal income taxes; then add certain non-taxed items such as social security and public assistance payments and subtract certain allowable "unusual" expenses, if any, that the family had.<sup>15</sup>

(v) Although the BEOG formula rests on the idea of a fair family contribution, in fact this family contribution need not actually be made. Congress did not want to bar a student from the program if his parents did not in fact provide their fair share; the

result in such cases, of course, is that the student must himself raise the parental portion. Likewise, if the hypothetical family contribution is low in terms of what most parents actually pay, then students generally will have to raise less than expected. In the end, for college students, tinkering with the fair parental contribution may not matter much since the student can generally sacrifice to close the gap. But at the elementary and secondary schools things would be quite different.

#### BABY-BEOG: HOW IT SHOULD WORK

We have described the BEOG rules at length because appreciation of their details suggests how these rules ought to be altered if the basic BEOG idea is to be applied to lower education.

At the elementary and secondary level it would be incongruous for the grant formula to be structured so that there is a gap between the fair parental contribution and total school costs. Non-parental sources available to college students are typically unavailable to younger pupils; the concept of a "fair student contribution" would make little sense even in high school. Likewise substantial family borrowing to finance primary or secondary students is hard to imagine. It is simply not a part of our culture; ask any bank. And private schools simply cannot provide scholarships to all who would need financial assistance. In our view, they should not even be asked to shoulder this burden; the private school scholarship generally comes indirectly from other families in the school community, while the point of a government scholarship plan at the primary and secondary school level should be fully to distribute the cost of empowering the needy family. Unlike BEOG grants, baby-BEOG should largely supplant existing private school scholarship sources.

If the BEOG formula were simply carried over to elementary and secondary schools, parents would be expected to make both the family and student contributions, and the poorest families would have to contribute a grossly disproportionate share of their income towards the cost of schooling. This not only offends our sense of equity but would assure that the neediest children either would be concentrated in the lowest cost schools or, far more likely, would not even consider leaving or threatening to leave public school. Our policy objectives for baby-BEOG, therefore, would be frustrated.

Our objection to the implied demand for further parental contributions could be met if the basic BEOG restrictions—the \$1800 maximum and the 50 percent of costs rule—were simply eliminated. But this solution runs into a different and important objection raised at the outset. As we said earlier, the family should have an incentive to shop for price; and limits like the 50 percent rule and the \$1800 ceiling do remove the incentive to spend indefinitely. Yet, for lower education there is a better way to assure that the fair family contribution plus the BEOG equal

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full school costs while at the same time insuring that the family contribution fairly increases as both income and school costs go up.<sup>16</sup>

To explain how this better formula would work, let us identify first a "standard" (or average) cost school; say it costs \$1800 to attend. A family with one child who sends the child to such a school would be required to make an "appropriate" contribution and the grant would be 100 percent of the difference. At this point let us assume that the contribution would be set at the 10.5 percent rate that the BEOG formula now contemplates as the family's fair contribution out of discretionary income.

Suppose now the family chooses a school costing more or less than \$1800. In that case an index number would be applied to its appropriate contribution to the standard cost school in order to determine the family's contribution to the school with different costs. This index number would be the ratio of the chosen school's cost to the cost of a standard school; for a school costing half the \$1800 standard the index number would be 1/2. Hence, if family A's contribution, given its need, would be \$400 in a standard cost school, it would become \$200 in a \$900 school; ( $\$900/\$1800=1/2$  and  $1/2$  of  $\$400=\$200$ ). On the other hand, if it selected a \$2700 school, its contribution would be \$600; ( $\$2700/\$1800=3/2$  and  $3/2$  of  $\$400=\$600$ ). For family A the grant program would match every \$2 of family contribution with \$7 worth of scholarship.

Suppose a wealthier family B's appropriate contribution to a standard cost school to be \$800; it would have to contribute \$400 in a \$900 school and \$1200 in a \$2700 school. For this less needy family the program would match every \$2 of the family's contribution with a \$2.50 scholarship. Stated differently, for every \$9 of extra school spending, family A pays \$2 and family B pays \$4--the program makes up the difference. This means, for example, that to shift its child from a \$1200 school to an \$2100 school would cost family A \$200 more and family B \$400 more.

If the family had more than one child in school, then let us assume that its contribution for each additional child would be the same proportionate increase now provided for in the BEOG formula. Table 4 illustrates this hypothetical proposal for three school cost levels, for two-parent families with 1 and 2 children (both in school) and with varying incomes. For simplicity, however, we have used 10 percent rather than 10.5 percent as the contribution rate, and we have used \$5000 and \$7000 as the family size related income disregards instead of the BEOG figures in Table 1.



## LEGISLATIVE PROPOSALS

TABLE 4

HYPOTHETICAL BABY-BEOG INDEXED PLAN  
FOR 3 TUITION LEVELS

<u>Family Income</u>		1 Child School Costs			2 Children School Costs Per Child		
		<u>\$900</u>	<u>1800</u>	<u>2700</u>	<u>900</u>	<u>1800</u>	<u>2700</u>
\$ 7,000	Family Contri- bution per child	100	200	300	0	0	0
	Grant per child	800	1600	2400	900	1800	2700
\$10,000	Family Contri- bution per child	250	500	750	105	210	310
	Grant per child	650	1300	1950	795	1590	2380
\$15,000	Family Contri- bution per child	500	1000	1500	280	560	840
	Grant per child	400	800	1200	620	1240	1860
\$20,000	Family Contri- bution per child	750	1500	2250	455	910	1365
	Grant per child	150	300	450	445	890	1335
\$30,000	Family Contri- bution per child	900	1800	2700	805	1610	2415
	Grant per child	0	0	0	95	190	285

A glance at Table 4 illustrates how the proposal serves the various principles we have advocated for a scholarship plan. First, the family contribution increases as its income goes up. Second, the family contribution increases as school costs go up. Third, the family contribution plus the grant equal total school costs. And fourth, as the number of its children in school increases, the family's contribution per child declines.

This hypothetical indexed plan, however, might be thought to be too expensive to the government. It may also be thought to require too little from families in certain cases, regardless of the availability of federal funds. Let us consider then a variety of possible adjustments in its parameters.

At least six types of alterations can be made to the hypothetical indexed grant plan that would shift costs more toward the family and away from government. First, the fair family contribution could be set as a greater proportion of discretionary income. Rather than 10 percent for the standard cost school, the rate could be higher. Put differently, the 10 percent rate could

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be established for a school costing less than \$1800 (our hypothetical plan imposes only a 5 percent contribution rate for a \$900 school). We explained earlier that the phase-out rate selected is ultimately an arbitrary compromise of a variety of values. In that vein we will propose for purposes of serious legislative discussion a fair family contribution rate of 12 percent for a \$1000 school. On the proportionality principle explained earlier, this implies a 24 percent rate for a \$2000 school and so on.

Second, the fair family contribution could be escalated at more than a proportional rate as school costs increase. In other words, the government matching rate could decline as the family spends more. For example, if the contribution rate is 12 percent for a \$1000 school, it could be made more than 24 percent as proposed above for a \$2000 school—say, 30 percent. Adjustments of this sort involve changing the amount of the price subsidy. Not only do they save public funds for a given cost school, but also they reduce the family's incentive to select a costlier school. Yet we see no particularly good reason to prefer such a decline in the matching rate, for our legislative proposal will continue to apply the proportionality principle.

Third, the amount of income disregarded can be reduced. That could be justified on the ground that the BEOG disregard is too generous a definition of discretionary income, being set above the poverty level. This is a difficult judgment to make. We like instead the idea that by lowering the disregard we can assure that virtually all families contribute some modest sum toward the cost of private education they use. The income offsets we propose for families of various sizes are set out in Table 5. (Compare Table 1).

TABLE 5

FEDERAL SCHOLARSHIP (BABY-BEOG) PLAN  
PROPOSED INCOME DISREGARDS

Number of Children (In two-parent family)	Disregard
1	\$4000
2	6000
3	7000
4	8000
5	9000

In addition to imposing some contribution on lower income families, this adjustment has the effect of (a) increasing the amount of the family contribution for all participating families and (b) lowering the family income maximum for participation in the plan. All these effects reduce costs.

Fourth, the extra family contribution for additional children attending private schools can be increased. For reasons described earlier, however, we prefer to stay with the BEOG rates.

Fifth, the definition of school costs can be tightened. We agree that ordinary living expenses (e.g., room and board) that sensibly count as costs for higher education, should not be subsidized by federal elementary and secondary scholarships. In short, boarding school opportunities should not be the object of this program. On the other hand, restricting the program to tuition alone seems too narrow. We would prefer to include as well school books, other school fees, reasonable transportation costs and essential school supplies.

Sixth, a ceiling could be placed on the amount of school costs toward which the government would contribute. If such a ceiling is established, it should take into account both the present cost of public schooling and the cost to start a new private school. Suppose we set the ceiling at \$1000. This is more than the tuition cost of many private—especially religious—schools today. This observation, however, neglects the fact that without endowment sources, it is very difficult to start a new school from scratch with tuition levels of \$1000. Especially since a central purpose of the plan is to empower poor and working class families credibly to threaten departure from public schools, a \$1000 ceiling would be too low. Given typical public school costs across the nation today, we think it should be appropriate at the outset for our indexed plan to have a cost matching ceiling of \$2000. We recognize that low income students wanting to attend more costly schools would have to receive additional scholarships from those schools or find the money elsewhere. We have some confidence, however, that the costlier schools would in most cases provide some supplemental financial assistance.

We have not considered here cost-reducing strategies that would involve changing the BEOG definition of income, the BEOG treatment of work expenses and so on, because they are largely satisfactory to us for these purposes. We do, however, favor a change in the assets contribution rule — which, it will be noticed, we have ignored so far for baby-BEOG purposes. Specifically, we think the home equity rule is wrong. Either home equity should be ignored, as it is in many needs-based programs; or else a separate additional home equity exemption (say, \$50,000) should be allowed. One thing to remember here is that while BEOG assumes that parents with home equity might borrow against it, this seems far more likely for college than for lower education, if for no other reason than the significant difference in the number of years of education involved.

Putting together the various provisions just discussed, we can now set out in tabular form how a federal scholarship plan to our liking would work for private elementary and secondary school. Table 6 assumes in each case that all the family's children are in private school.

TABLE 6  
PROPOSED FEDERAL SCHOLARSHIP (BABY-BEOG) PLAN

<u>Family Income</u>		<u>1 Child</u>				<u>2 Children</u>				<u>3 Children</u>			
		School Costs				School Costs				School Costs			
		<u>500</u>	<u>1000</u>	<u>2000</u>	<u>2500</u>	<u>500</u>	<u>1000</u>	<u>2000</u>	<u>2500</u>	<u>500</u>	<u>1000</u>	<u>2000</u>	<u>2500</u>
\$ 5,000	Family Contribution Per Child	60	120	240	740	0	0	0	500	0	0	0	500
	Grant Contribution Per Child	440	880	1760	1760	500	1000	2000	2000	500	1000	2000	2000
7,500	Family Contribution Per Child	210	420	840	1340	63	126	252	752	15	30	60	560
	Grant Contribution Per Child	290	580	1160	1160	437	874	1748	1748	485	970	1840	1840
10,000	Family Contribution Per Child	360	720	1440	1940	168	336	672	1172	90	180	360	860
	Grant Contribution Per Child	140	280	560	560	332	664	1328	1328	410	820	1640	1640
15,000	Family Contribution Per Child	500	1000	2000	2500	378	756	1512	2012	240	480	960	1460
	Grant Contribution Per Child	0	0	0	0	122	244	488	488	260	520	1040	1040
20,000	Family Contribution Per Child	500	1000	2000	2500	500	1000	2000	2500	390	780	1560	2060
	Grant Contribution Per Child	0	0	0	0	0	0	0	0	110	220	440	440

### CONSTITUTIONALITY OF OUR BABY-BEOG PROPOSAL

Our proposal ought to pass First Amendment scrutiny by the Supreme Court in spite of the inclusion of religious schools. It is safer by far than the typical educational tax credit proposal for four reasons. First, its purpose is plainly nonreligious; it is based on a simple traditional philosophy favoring family choice of schools, whether public or private. Second, unlike tax credits, which benefit private schools only, our version of baby-BEOG is designed to improve public education. The greater opportunity for lower families to "exit" would stimulate public schools to stop taking them for granted and to improve the quality of service. Third, while the other schemes favor existing schools (mostly religious) by forgiving tuition already paid, our baby-BEOG proposal would put the subsidy directly in the hands of the consumer. Fourth, the scholarship will be big enough to stimulate the growth of new schools—including many nonreligious schools. These factors together demonstrate that aid to religion will only be a side effect. This will be reassuring to a Court which in the past has been presented with schemes that have had as their primary purpose and intended effect the bailing out of existing religious schools.

### TRANSITION: A MORE MODEST PROPOSAL

In 1980, Senator Moynihan's baby-BEOG plan failed to win Senate approval. With Ronald Reagan as the new President and a shift in Senate personnel, congressional friends of private education will surely try once more to adopt some plan that will help families who opt out of the public schools. We fear that a modest non-refundable tax credit plan will be adopted. Apart from being poor public policy, this scheme is likely to be held unconstitutional by the U.S. Supreme Court. Congress can do better. Our version of baby-BEOG might become a compromise vehicle drawing together conservatives and liberals. For the short run, however, there is yet another simpler and more modest proposal which could appeal to both groups and which would represent a significant first step toward empowering ordinary families.

As a transitional measure, we propose that Title I of the Elementary and Secondary Education Act be converted to a "voucher" system. Now costing more than \$3 billion annually, Title I has succeeded reasonably well as a non-stigmatizing public employment scheme. As a compensatory education device, however, it has little to show for itself. More promising is an arrangement whereby individual needy families control their child's share of the federal budget in the form of a mini-voucher. This could be easily managed.<sup>17</sup>

Turning Title I funds into mini-vouchers would help poor, low achieving children in private schools finally get their fair share of the pie. Indeed, for many poor families the voucher would be

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enough to pay for all or most of their basic private school tuition—something which should be permitted under the program. Other poor families will be able to switch from public to private schools of choice by having a Title I voucher. Finally, the bulk of poor families, whose children would remain in public schools, would gain a measure of influence over their children's education. They could, of course, tender their voucher to the local public school for the enrichment program the school offers. Alternatively, however, they could choose from an array of part time, after school, weekend or summer programs that will become available and are specially designed for low achieving students.

Title I vouchers and our baby-BEOG plan share common themes—focusing on lower income families in a way that permits them either to choose private schools for their children or to put pressure on public schools to reform. Seen in this light, a revamped Title I can be an important first step toward our proposal for federal scholarships for private elementary and secondary school users.

## NOTES

1. 20 U.S.C. Sec. 1070a (1976), as amended by 20 U.S.C. Sec. 1070(a) (Supp. II 1978).

2. Moynihan's proposal was first contained in S. 1101, 96th Cong., 1st Sess. (May 9, 1979). Moynihan then testified on behalf of the proposal on October 23, 1979 before the Subcommittee on Education, Arts, and Humanities of the Senate Committee on Labor and Human Resources.

3. Although many proposals to provide a federal income tax credit for certain educational expenses have been introduced, the leading contender of late has been styled the Packwood-Moynihan bill (after its sponsors). In the summer of 1978 it failed in the Senate by eight votes. Senators Moynihan and Packwood reintroduced this legislation in the 97th Congress as S. 500.

4. See Milton Friedman, Capitalism and Freedom (Chicago: University of Chicago Press, 1962), ch. 6, p. 85. We do favor other voucher plans, however. See generally, John E. Coons and Stephen D. Sugarman, Education by Choice: The Case for Family Control (Berkeley: University of California Press, 1978).

5. We have proposed voucher plans in California that either (1) prohibit schools from charging more than the voucher and generally require schools to serve all applicants with excess demand resolved by lot or (2) guarantee low income children 25 percent of the spaces in voucher schools and require excess tuition charges to be assessed on the basis of ability to pay.

6. On June 23, 1980, Moynihan brought his proposal to the floor of the Senate by way of an amendment to the Higher Education Act that then was before the body. Moynihan engaged in a lengthy debate with Senator Hollings, and on June 24, 1980 the amendment

was defeated 71-24. Senator Metzenbaum, a supporter of the Moynihan proposal, had earlier tried unsuccessfully to add it by amendment in committee.

7. See generally, Coons and Sugarman, Education by Choice (1978).

8. By contrast, Senator Moynihan, in the floor debate on his proposal, emphasized the desirability of helping out low income families currently using private schools. See 126 Congressional Record S7838-55 and 7964-74, (daily ed., June 23-24, 1980).

9. These numbers are taken from the 1979-80 grant period. See generally, BEOG Program Determination of Eligibility Index 1979-1980 (HEW Office of Education, Bureau of Student Financial Assistance). For 1980-81, because Congress did not fully fund the program, grants did not exceed \$1750. For 1981-82 the grant maximum is scheduled to go to \$1900, subject to full Congressional appropriation. Further increases in subsequent years, up to \$2600 in academic year 1985-86, are also now in the law. Sec. 402(b) (1) of the Education Amendments of 1980, Pub.L. 96-374, 94 Stat. 1402.

10. In certain circumstances, college students can show themselves financially independent from their parents so as to qualify for "independent student" status and thereby have their grant determined apart from parental income and assets. We will ignore this provision since it is irrelevant for lower education purposes.

11. See the discussion of the Middle Income Student Assistance Act at 1978 U.S. Cong. and Ad. News 5314 (House Rep. 95-951).

12. Objections to this impact caused Congress in 1980 to adjust the half-cost limit starting in 1982-83. The limit is scheduled to be 60 percent of costs then and to rise to 70 percent of costs by 1985-86. Sec. 402 (c)(1) of the Education Amendments of 1980, note 9 *supra*.

13. Fifty percent of the earnings of the parent with the least earnings up to a maximum of \$1500.

14. A single parent with two children is treated like a two parent family with one child and so on.

15. Unusual expenses include some catastrophic losses and extra large medical expenses as well as unreimbursed elementary and secondary school costs.

16. Our proposal here is based upon the "family power equilibrizing" idea we first introduced more than a decade ago. See generally, John E. Coons, William Clune III, and Stephen D. Sugarman, Private Wealth and Public Education (Cambridge, Mass: Harvard University Press, 1970), pp. 256-268. For a more detailed discussion see Coons and Sugarman, "Family Choice in Education: A Model State System for Vouchers," 59 Calif. L. Rev. 321 (1971).

17. See Stephen D. Sugarman, "Education Reform at the Margin: Two Ideas," Phi Delta Kappan (Nov. 1977) at p. 154.

## 14. On Making It Look Easy by Doing It Wrong: A Critical View of the Justice Department

Antonin Scalia

The 1978 opinion of the Justice Department's Office of Legal Counsel regarding the tuition tax credit legislation and its 1980 opinion regarding the extension of BEOGs to elementary and secondary school students (both of which were adopted by summary affirmance, so to speak, of the Attorney General) are wrong. They are wrong in the way good lawyers have been trained to be wrong, not so much in what they say as in what they leave unsaid. They make the best case against the constitutionality of the legislation but fail to give the devil, or what the Carter administration evidently regarded as the devil, his due.

It is, in fact, impossible to say with any assurance that this legislation would be struck down by the present Supreme Court. It is equally impossible to say with any assurance it would not be struck down. The reason why this is so was expressed quite clearly by Justice White in the concluding paragraph of the most recent Supreme Court opinion dealing with the general subject:

Establishment Clause cases are not easy, they stir deep feelings, and we are divided among ourselves, perhaps reflecting the different views on this subject of the people of this country. What is certain is that our decisions have tended to avoid categorical imperatives and absolutist approaches at either end of the range of possible outcomes. This course sacrifices clarity and predictability for flexibility, but this promises to be the case until the continuing interaction between the courts and states produces a single, more-encompassing construction of the Establishment Clause.<sup>1</sup>

An extraordinary admission in a majority opinion, but indeed, as one might expect, somewhat understating the case.

### CHAOS AND CHANGE

The fact is that Supreme Court jurisprudence concerning the Establishment Clause in general, and the application of that clause to governmental assistance for religiously affiliated education in particular, is in a state of utter chaos and unpredictable change.

The chaos is demonstrated easily enough by a recitation of the Supreme Court's commandments to the States in the aid to education



field: Thou mayest provide bus transportation to and from school for parochial school students;<sup>2</sup> but thou shalt not provide bus transportation to and from field trips.<sup>3</sup> Thou mayest furnish textbooks for use in sectarian schools;<sup>4</sup> but thou shalt not provide other instructional materials and equipment, such as maps.<sup>5</sup> (Senator Moynihan has raised the question, "What do you do with a map that's in a textbook?"; the Supreme Court has not yet addressed that fine issue.) Thou mayest exempt from real estate taxes premises devoted exclusively to worship of the Almighty;<sup>6</sup> but thou shalt not, in certain circumstances at least, permit parents an income tax remission for tuition payments to schools whose function consists in part of sectarian education.<sup>7</sup> I envision these commandments not as engraved upon tablets of stone but as scribbled on one of those funny pads that children use, with a plastic sheet on top that can be pulled up to erase everything and start anew.

The chaos is just as apparent if one wanders in the Establishment Clause field beyond the narrow area of aid to education. Thus, we are told that the so-called neutrality principle controls the government's attitude towards religion. That is to say, the government must not only abstain from favoring one sect over another, but it must also not favor religion over irreligion.<sup>8</sup> Yet when Wisconsin sought to compel Amish parents to send their children to school beyond the eighth grade<sup>9</sup> and when South Carolina sought to withhold unemployment compensation from a Seventh Day Adventist who was unemployed only because she would not accept Saturday work,<sup>10</sup> the First Amendment was held not merely to permit but, indeed, to require special dispensation for these religious beliefs, dispensation that would surely not be accorded to persons who abhor high school education or Saturday work for mere philosophical or temperamental reasons. And how is it, one might ask, that the term "religion," which appears only once in the relevant constitutional provision,<sup>1</sup> is interpreted very broadly to cover even philosophical dispositions of conscience when freedom of religion is at issue, but is interpreted very narrowly to include virtually nothing but theistic belief when establishment of religion is at issue?<sup>12</sup>

So much for the chaos. As for the change: Perhaps I am wrong to mention this as an element separate from the chaos, because I suspect it is ultimately the one that causes the other — that is to say, in each successive era of change the cases from the prior era are not overruled, possibly for the very good reason that the Court realizes it is writing on a funny-pad and that the prior era may soon return. In any event, recurrent and substantial change characterizes even the most fundamental aspects of Establishment Clause jurisprudence. For example, the neutrality principle that I just described was set forth in 1947, in the Everson case, in which the Court said: "The state [must] be a neutral in its relations with groups of religious believers and non-believers....State power is no more to be used so as to handicap religions than it is to favor them."<sup>13</sup> Five

years later the Court had changed its mind and wrote the following:

We are a religious people whose institutions presuppose a Supreme Being....When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs....The government must be neutral when it comes to competition between sects....It may not coerce anyone to attend church, to observe a religious holiday, or to take religious instruction. But it can close its doors or suspend its operations as to those who want to repair to their religious sanctuary for worship or instruction.<sup>14</sup>

By 1963, the neutrality principle was back in favor again, at least verbally, in the Schempp case, though it is difficult (no, let us be frank, impossible) to reconcile Schempp with cases such as the Amish and Seventh Day Adventist decisions that I referred to above.

An even more pronounced condition of constant change is apparent in the aid to education cases in particular. The 1978 opinion of the Office of Legal Counsel concerning tuition tax credits attempts to give the appearance of pyramid-like antiquity and solidity to the current law by observing that the three-part test of Lemon v. Kurtzman<sup>15</sup> "has been repeated in every significant Supreme Court decision in this area during the last decade." (It was actually only seven years at that time, but let that go; even a full decade is breathlessly short enough, considering the major issue of social policy involved.) But in fact the three-part test has not been consistently followed since 1971, or at least not in the fashion in which it was written. As originally expressed, the test was as follows:

First, a statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion....; finally, the statute must not foster "an excessive government entanglement with religion."<sup>16</sup>

Note that the second test refers to "its principal or primary effect," connoting a single, main effect. This meaning is reaffirmed later in the opinion, when the Court refers to "the principal or primary effect of the programs."<sup>17</sup> The Court gave the test the same meaning in another opinion issued on the same day when it upheld (except in one limited respect) the federal Higher Education Facilities Act: "[W]e consider four questions...Second, is the primary effect of the Act to advance or inhibit religion?"<sup>18</sup>

But look what happens to the test within two years: It is used in 1971 to validate a federal program. In 1973, when it is used to invalidate state aid to education legislation, it is expressed quite differently:

[T]he propriety of a legislature's purposes may not immunize from further scrutiny a law which has a primary effect that advances religion....[I]t simply cannot be denied that this section has a primary effect that advances religion in that it subsidizes directly the religious activities of sectarian elementary and secondary schools....[Earlier] cases simply recognized that sectarian schools perform secular, educational functions as well as religious functions, and that some forms of aid may be channeled to the secular without providing direct aid to the sectarian....Of course, it is true in each case that the provision of such natural, nonideological aid, assisting only the secular functions of sectarian schools, served indirectly and incidentally to promote the religious function....But an indirect and incidental effect beneficial to religious institutions has never been thought a sufficient defect to warrant the invalidation of a state law.<sup>19</sup>

Note how nicely the test of "the principal or primary effect," meaning, quite obviously, the main effect, has been transmogrified into a test of "a primary effect," in the sense of a direct or immediate rather than an indirect or secondary effect. The two "tests" are, of course, quite different. On the other hand, the Court's latest decision on the point may have gone back to the original test, since it repeats the original formulation that a statute is valid "if its principal or primary effect neither advances nor inhibits religion." Several times the opinion of the Court refers to "the primary effect."<sup>20</sup> So even the decade-old Gibraltar of doctrine to which the Justice Department's opinion refers, turns out to be only seven years old, or less than a year old in its latest reincarnation, and surely more like a chameleon than a rock.

But the major omission in the Justice Department's appeal to the firm and unshakable principle of the three-part test is its failure to note that the test (except, perhaps, the first part of it) really doesn't say very much. What is "excessive entanglement"? And what is "the principal or primary effect" of legislation? Or, depending on which precedents the Court cares to follow, what is "a primary or a direct effect" of legislation? (A good proportion of all tort litigation is attributable to the utter indeterminateness of such a cause-effect standard.) The Supreme Court itself, with characteristic understatement, acknowledged in Tilton the limited utility of its "test":

There are always risks in treating criteria discussed by

the Court from time to time as "tests" in any limiting sense of that term. Constitutional adjudication does not lend itself to the absolutes of the physical sciences or mathematics. The standards should, rather, be viewed as guidelines with which to identify instances in which the objectives of the Religion Clauses have been impaired. And, as we have noted..., candor compels the acknowledgment that we can only dimly perceive the boundaries of permissible government activity in this sensitive area of constitutional adjudication.<sup>21</sup>

### DISTINGUISHING FEATURES OF BEOG

How, then, is one confidently to predict the outcome of the next Supreme Court opinion in an area so characterized by chaos even as to the most fundamental principles and by constant and multi-directional change? The answer, I suggest, is that one quite obviously cannot confidently predict it, even when the facts of the case are foursquare with those of earlier decisions; and much less so when, as in the present case, there are significant differences of the sort that can be expected to alter the Justices' "feel" for the matter. Yet despite the fact that the Supreme Court has not invalidated federal legislation such as the BEOG legislation or the tuition tax credit proposal, the Justice Department opinions of 1978 and 1980, without even an expression of uncertainty, categorically assert the unconstitutionality of federal legislation then being considered by the Congress. Such a cavalier prediction of what the Court would do is simply too much to be believed. The significant factors I refer to that distinguish the BEOG proposal from any other aid to education program declared unconstitutional by the Court are twofold, and in combination they render the prediction of unconstitutionality a very risky bet.

#### Breadth of Coverage

The first significant difference between the BEOG proposal and statutes such as the one invalidated in Nyquist is that the former has a broad base. It does not benefit exclusively, or even primarily, students who attend church-related schools, much less the schools of a single denomination. More than 95 percent of all the BEOG funds, it is estimated, would be distributed to students attending colleges and universities, where church-related schools are a small minority—if, indeed, for constitutional purposes sectarian schools at the post secondary level need even be distinguished from public or private nonsectarian schools. I do not have precise figures regarding the number of church-school students versus the number of non-church-school students who would be benefited under BEOG, but it is clear that the latter will vastly predominate. By contrast, the situation noted by the Court in Lemon v. Kurtzman, was that 95

percent of the students benefited by the Rhode Island statute were in Catholic schools.<sup>22</sup> In Nyquist, 85 percent of the schools attended by the students receiving tuition grants and tax benefits under the New York law were church-related, and "all or practically all" of the schools entitled to direct maintenance and repair grants were Catholic.<sup>23</sup> In Sloan v. Lemon, at least 90 percent, and perhaps as many as 96 percent, of the students qualifying for the Pennsylvania "parent reimbursement" payments attended church-related schools, "most of these...affiliated with the Roman Catholic Church."<sup>24</sup>

It was not inadvertence or verbosity that prompted the Court to recite these statistics in those opinions. One of the bases the Court has used for distinguishing state laws granting tax exemption to church property, which are constitutional under the Walz case, from those state aid to education programs that it has declared invalid is the fact that the former are not restricted to a class composed exclusively or even predominantly of religious institutions but apply to all property devoted to religious, education, or charitable purposes.<sup>25</sup> In Nyquist, by contrast, the Court said that the benefits "flow primarily to the parents of children attending sectarian non-public schools." The Court continued:

Without intimating whether this factor alone might have controlling significance in another context in some future case, it should be apparent that in terms of the potential divisiveness of any legislative measure the narrowness of the benefited class would be an important factor.<sup>26</sup>

And the Court has used this same factor of broadness of benefited class to distinguish the invalidated programs from the state school busing and textbook loan programs that have been upheld. As Justice Powell wrote in Sloan:

Our decision...is not dependent upon...speculation. Instead we look to the substance of the program, and no matter how it is characterized its effect remains the same. The State has singled out a class of its citizens for a special economic benefit...[A]t bottom its intended consequence is to preserve and support religion-oriented institutions. We think it plain that this is quite unlike the sort of "indirect" and "incidental" benefits that flowed to sectarian schools from programs aiding all parents by supplying bus transportation and secular textbooks for their children. Such benefits...provided no special aid for those who had chosen to support religious schools.<sup>27</sup>

This distinguishing factor of the broadness of the group benefited may be somewhat stronger with respect to the tuition tax credit legislation than it is with respect to the BEOG proposal,

for in the former case the entire program of tuition tax credits for elementary and secondary school students as well as for college students would have been created by the same enactment, whereas the BEOG proposal would add elementary and secondary students (mostly in church-related schools) to an existing program currently limited to higher education. But it seems to me this should make no difference. The "broadness" or "narrowness" of benefit coverage for purposes of the Court's distinction should be determined by the total scope of a logically and conceptually unitary program, and not by the scope of one or another individual amendment to it. For the "broadness" or "narrowness" factor speaks to the presence or absence of preferential purpose and effect, and it can hardly be called preferential to add to an existing program a group that could logically have been included there in the first place. That is to say, far from being "preferential" to a class that is heavily weighted toward church-related schools, the BEOG proposal would merely eliminate a pre-existing discrimination against that class.

If I were to indulge the assumption, for purposes of this discussion, that the Court's opinions display some pattern of reason and consistency, then I would note that the foregoing analysis of the "broadness" and "narrowness" issue is endorsed by the Supreme Court. For example, the New York statute authorizing the loan of secular textbooks to children attending church-related schools was upheld in the Allen case because it was a broad-based statute that extended to private school students a program already available for public school students.<sup>28</sup> Similarly, the Pennsylvania textbook loan program upheld in Meek v. Pittenger did nothing but "extend to all schoolchildren the benefit of Pennsylvania's well established policy of lending textbooks free of charge to elementary and secondary school students."<sup>29</sup> Although it does not appear in the Everson opinion, the New Jersey school-busing program approved in that case likewise seems to have consisted of an extension to private-school students of a benefit that already existed for public-school students. That is certainly the case with respect to state school-busing measures enacted since Everson.

The attempt of the Justice Department's 1978 opinion to explain away this clearly distinguishing feature, explicitly enunciated in Supreme Court decisions, is unconvincing. Indeed, this piece of lawyer-like advocacy is so feeble as to prove nothing but the tendentiousness of the opinion itself. The Department's first argument is as follows: "The Supreme Court has repeatedly drawn a distinction between grants to sectarian colleges and universities and similar grants at the pre-college level." But of what possible relevance is that? Even disregarding the fact that the textbook and busing cases referred to above involved only pre-college students, the Department's argument makes no sense at the level of theory alone. If we did not know we were dealing with a "suspect class," so to speak, there would be no need to demonstrate that that class was sufficiently diluted in a broader group to begin with! That is to say,

the "breadth of benefit" distinction enunciated by the Court assumes, and is surely not refuted by, the constitutionally more questionable status of the narrow group alone.

The Justice Department's opinion argues further that the effects of the proposed legislation will be different at the elementary/secondary and college levels, and that the legislators know that the two areas are different. I take it to be the point of these statements that the program in question does not qualify for the "breadth of benefited class" validation because it does not meet the requirement I suggested earlier, of being "logically or conceptually unitary." If that were clearly true, it would support the Department's out-of-hand dismissal of the "breadth of benefit" distinction. Undoubtedly, one could not invoke the distinction in support of a measure that adds parochial school aid (of a sort that public schools do not enjoy) to a broad-based highway funding program. But is the difference between aiding college tuition payments and aiding elementary and secondary school tuition payments really of that magnitude? Surely many federal regulatory requirements, and many federal assistance programs, apply to schools at all levels, and are not thought to be contrived by virtue of such coverage. The GI Bill, it may be noted, has long paid for both high school and college education. And the difference between colleges and elementary/secondary schools is certainly less than the difference between churches, on the one hand, and hospitals, museums and opera houses on the other; but in Walz the latter aggregation was held sufficient to support church tax exemptions on "breadth of benefit" grounds.

The Department of Justice opinion concludes triumphantly that "the court has stated clearly that to [display an unconstitutional] 'primary effect' a law need not result exclusively or even predominantly in religious benefits. Rather, a primary effect can exist even where there are any number of other appropriate and praiseworthy consequences of the legislation." That is an accurate quotation, but it is wrenched out of context. It pertains not to the inclusion in the legislation of secular beneficiaries who far outnumber the religious, but rather to "other effects" achieved through benefiting the narrow religious class. For example, secular educational effects might be achieved by direct grants limited to Catholic schools, but such a program by virtue of its discriminatory limitation would be invalid. In any case, the point here is not that breadth of coverage always assures constitutionality, but that it often may. It is therefore impossible to assert that prior Supreme Court decisions cover the tuition tax credit proposal or the BEOG proposal.

#### Federal Action

The second reason why this legislation presents a distinctive case is even more persuasive. No Supreme Court opinion disallowing

a program of tuition assistance has involved a federal statute. In fact, only one minor feature of any federal aid to education program has ever been invalidated on Establishment Clause grounds, that being a feature under which the federal government would have paid for the construction of buildings that could ultimately be used for outright worship purposes.<sup>30</sup> For some reason that escapes me, the federal government's Department of Justice doesn't seem to appreciate the state-federal distinction. So a word or two is in order about "The Importance of Being Federal."

Realistically, the Court is much less inclined to slap Congress on the wrist than a state legislature. In the entire history of the Republic only about one hundred federal laws have been declared unconstitutional. There are reasons for this other than the mere self-protective instinct of the federal courts. As Justice Holmes put it many years ago:

I do not think the United States would come to an end if we lost our power to declare an Act of Congress void. I do think the Union would be imperiled if we could not make that declaration as to the laws of the several States.<sup>31</sup>

In the area of the Establishment Clause in particular, a stricter vigilance over the states makes special sense. At that level of government, the mere fact that a single religious sect is often a majority or a substantial plurality of the population, may present a real danger that legislation will aid a particular religion under the guise of pursuing secular, or at least nondenominational, goals. It is no accident that the Supreme Court decisions striking down state tuition plans in states with large Catholic populations repeatedly make a special point of the high proportion of the benefited students who attend Catholic schools. But in the national legislature, by contrast, no single sect predominates, and the Court can more readily allow educational or freedom-of-choice considerations to be expressed in tuition grant legislation, without fearing that these policy choices are really subterfuges for an imposition by a particular sect upon their fellow citizens.

It is not unheard-of that a constitutional provision should have stricter application to the states than to the federal government. That is the case, for example, with the Equal Protection Clause, as it applies to disabilities imposed by government upon aliens. The federal government can impose such disabilities much more freely than the states, since it is more generally justified (by reason of its exclusive power over foreign affairs, immigration and naturalization) in taking the characteristic of alienage into account.<sup>32</sup>

A similar theoretical basis supports greater freedom for Congress than for the states in the area of educational policy. One of the justifications—perhaps the most important justification—behind legislation extending federal educational subsidies to children



in private schools is the assertion that without some such subsidy, state support of exclusively public schools has the effect of impairing the freedom of religion of those who wish to attend, or wish their children to attend, different schools. The argument is that it wrongfully constrains freedom of religion to condition such a choice upon the relinquishment of a significant educational subsidy to which these people would otherwise be entitled--just as in the Sherbert case the Court ruled that the State of South Carolina had wrongfully constrained the Seventh Day Adventist's selection of Saturday as the day of rest by withholding unemployment compensation.

One may agree with this justification or disagree with it, but it unquestionably underlies much of the support for private school subsidies. And the point is that the Constitution gives Congress, not the states, special authority to pass legislation designed to remedy state-created impairment of freedom of religion. The Supreme Court has so held even where such impairment does not rise to the level of unconstitutionality. For the Fourteenth Amendment, which is the source of the application of the freedom of religion clauses to the states, provides that "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."<sup>33</sup> This power has been held to permit Congress to alter (within certain limits) the judicially defined line between the requirements of the equal protection clause on the one hand and the constitutional power of the states to fix voting qualifications on the other.<sup>34</sup> One may argue that this power should equally permit Congress to alter (within certain limits) the judicially defined balance between the competing values of nonestablishment and freedom of religion. Thus, as in the alienage cases, congressional action might go beyond what the state legislatures could do.

I do not necessarily endorse this last theory--mostly because I do not endorse the notion of a legislatively expandable Fourteenth Amendment that the Katzenbach and Mitchell cases establish. I would prefer to ground the preferential treatment of federal statutes in the educational policy field upon the deference generally to be accorded constitutional determinations of the national Congress--determinations, incidentally that need not be deemed to approve equivalent action by the states, unless the Congress explicitly says so.

#### CONGRESS'S ROLE IN CONSTITUTIONAL INTERPRETATION

Thus, two alternative theories exist, with solid foundation in the case law, for distinguishing the proposed federal tuition tax credit and the BEOG proposal from state programs previously held invalid. Even if, as we have assumed up to now, the only significant constitutional question were "Given its past holdings and dicta, would the present Supreme court declare these proposals to violate the First Amendment?," the answer would have to be: "Not neces-

sarily." But in fact, that is not the right question at all. The parsing of cases and the nit-picking of aberrant dicta in each opinion that flows from the pen of the Court is all good clean fun, a profitable living for some of us, and a respectable enterprise for lawyers representing or advising parties. But the issue here is not whether some private individual may or may not take a particular action with impunity. It is whether Congress may and should pass a particular law. And Congress has its own responsibility of constitutional interpretation, quite independent from that of the Court, and flowing from the same high source, namely, its members' oath of office to support and defend the Constitution.

For the purpose of determining whether Congress should pass a law, it is not appropriate to hang upon every word that drops from the latest, shifting majority of Justices in a deeply divided Court unable to frame any consistent, principled basis of decision. Indeed, for Congress to perform its solemn constitutional obligation by running back and forth to the beat of that syncopated drum would be positively grotesque. This is not to say that in the performance of its independent responsibility to interpret the Constitution, Congress should ignore the Court. Of course, a long, principled line of consistent decisions has great weight, and should inform the judgment of the legislative branch. Even an eccentric, unprincipled five-to-four decision that is directly on point might be permitted to guide that judgment, if all of the five are still alive. But neither of those conditions exists here. Congress is not faced with a judicial precedent directly at odds with the BEOG proposal or the tuition tax credit proposal. And it most assuredly is not confronted with a long, principled line of consistent decisions on the subject.

The major role of Congress in interpreting the Constitution is not, I think, widely enough acknowledged. Even members of Congress themselves underestimate it. Their role is enormously important, more important ultimately than the role of the Court. The fact is that no theory of constitutional interpretation consistently pursued by Congress has ultimately failed, even when it has initially floundered in the face of a coherent body of Supreme Court jurisprudence. Examples of this truth include the expansion of the commerce power, the effective disappearance of the doctrine of unlawful delegation of legislative authority, and, most recently, the death of the doctrine that laws must be "color-blind." Even greater should be the power and the responsibility of Congress when it is dealing with an area in which the Court itself has come as close as decorum will permit to acknowledging that it doesn't have the foggiest idea what it is doing and requires solid guidance.

The real constitutional question, then, is not whether one can predict that a particular bill will manage to attract a majority on the current Court, but rather, whether a legislative proposal accords with the constitutional traditions and beliefs of our people. Only when the false question of predicting the behavior of an erratic court in an unsettled area has been eliminated can the congressional

responsibility for constitutional interpretation be faithfully fulfilled. My view of what that responsibility requires in the present case can be stated in the form of a brief inquiry. What would be the constitutional status of BEOG legislation that provided tuition assistance only for students in non-religious elementary and secondary private schools? It would unquestionably be constitutional, would it not? In order to oppose the Moynihan BEOG proposal on constitutional grounds, then, one must believe that the First Amendment, which was adopted out of a special solicitude for religion, has the effect of not merely permitting but requiring a special discrimination against religion. Only students who wish to attend religious schools not only may but absolutely must be excluded from a subsidy available to all others. That bizarre, antireligious result is simply too much to derive, it seems to me, from the mere prohibition of an establishment.

Legislators who do not agree with that and want to be fair in this matter must explain, I think, why federal tax exemptions generally applicable to other charitable institutions must not be withheld from places of worship. In truth, the present case is no different. But at least these issues should be discussed in Congress at a principled level. They should not be foreclosed by lawyerly hair-splitting of selected hairs and brash judicial entrail-reading of the sort represented by the Justice Department opinions.

## NOTES

1. Committee for Public Education and Religious Liberty v. Regan, 444 U.S. 646, 662 (1980).
2. Everson v. Board of Education, 330 U.S. 1 (1947).
3. Wolman v. Walter, 433 U.S. 229 (1977).
4. Board of Education v. Allen, 392 U.S. 236 (1968), and Meek v. Pittenger, 421 U.S. 349 (1975).
5. Wolman, note 3 supra.
6. Walz v. Tax Commission, 397 U.S. 664 (1970).
7. Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756 (1973).
8. Everson, note 2 supra, and Abington School District v. Schempp, 374 U.S. 203 (1963).
9. Wisconsin v. Yoder, 406 U.S. 205 (1972).
10. Sherbert v. Verner, 374 U.S. 398 (1963).
11. "Congress shall make no law respecting an establishment of religion, or restricting the free exercise thereof." U.S. Const., Amendment I.
12. See generally Richard E. Morgan, "The Establishment Clause and Sectarian Schools: A Final Installment?" 1973 Supreme Ct. Rev. 57, and Paul James Toscano, "A Dubious Neutrality: The Establishment of Secularism in the Public Schools," 1979 Brigham Young L. Rev. 177.

13. *Everson*, note 2 *supra*, 330 U.S. at 14-15.
14. *Zorach v. Clauson*, 343 U.S. 306, 313-14 (1952).
15. 403 U.S. 602, 612 (1971).
16. *Ibid.*, at 612-613.
17. *Ibid.*, at 613 (emphasis added).
18. *Tilton v. Richardson*, 403 U.S. 672, 679 (1971).
19. *Nyquist*, note 7 *supra*, 413 U.S. at 774-75 (emphasis added).
20. *Regan*, note 1 *supra*, 444 U.S. at 653, 658.
21. *Tilton*, note 18 *supra*, 403 U.S. at 678.
22. *Lemon v. Kurtzman*, 403 U.S. 602, 609 (1971).
23. *Nyquist*, note 7 *supra*, 413 U.S. at 768.
24. *Sloan v. Lemon*, 413 U.S. 825, 830 (1973).
25. *Walz*, note 6 *supra*, 397 U.S. at 673.
26. *Nyquist*, note 7 *supra*, 413 U.S. at 794.
27. *Sloan*, note 24 *supra*, 413 U.S. at 832 (emphasis in original).
28. *Allen*, note 4 *supra*, 392 U.S. at 243.
29. *Meek*, note 4 *supra*, 403 U.S. at 682-84.
30. *Tilton*, note 18 *supra*, 403 U.S. at 682-84.
31. Oliver Wendell Holmes, Jr., Collected Legal Papers 295 (1920).
32. Compare *Mathews v. Diaz*, 426 U.S. 67 (1976) with *Nyquist v. Mauclet*, 432 U.S. 1 (1977).
33. U.S. Const., Amendment XIV, Sec. 5.
34. See *Katzenbach v. Morgan*, 384 U.S. 641 (1966), and *Oregon v. Mitchell*, 400 U.S. 112 (1970).

National Association  
of State Universities  
and Land-Grant Colleges

Robert L. Clodius, President

STATEMENT FOR THE RECORD  
ON PROPOSALS TO AUTHORIZE  
TUITION TAX CREDITS FOR FAMILIES  
OF STUDENTS ATTENDING INSTITUTIONS OF HIGHER EDUCATION

SUBMITTED BY  
THE NATIONAL ASSOCIATION OF STATE UNIVERSITIES  
AND LAND-GRANT COLLEGES  
TO THE SUBCOMMITTEE ON DEBT MANAGEMENT  
AND TAXATION  
SENATE COMMITTEE ON FINANCE  
JUNE 16, 1981

We are grateful, on behalf of the membership of our Association, for this opportunity to submit for the hearing record of your Subcommittee the views of our members on pending legislation to authorize a tuition tax credit for families with dependents enrolled in institutions of higher education. The principal proposal S.550, deserves special attention, since its principal sponsors and many of its co-sponsors for many years have been stalwart in their support of the objectives and responsibilities of institutions of higher education and the students they exist to serve. Their support for higher education programs has come through provisions in the Tax Code within the jurisdiction of your committee, as well as through legislation enacted with the sponsorship of authorization committees. We are mindful that in legislation under your jurisdiction there are provisions for modifying the tax code to provide incentives to industry to support research on university campuses and provisions for changes in deductions permitted taxpayers that also would provide incentives for charitable giving to educational institutions.

Such new laws would provide genuine assistance to higher education and we urge your support for them. We note all of this to emphasize that the comments we will make in this document regarding tuition tax credits are the result of careful consideration over a long period of time by the chief executive officers of 140 state institutions enrolling approximately 30% of all students in American higher education. Because of the stature of the sponsors of the legislation and because the proposed legislation could have extraordinary effects on access to funds to pay for educational costs by the families of our students, the

executive committee of our Association required that positions long held by the association on the subject of tuition tax credits be reviewed and modified if changes of circumstances warranted a more contemporary and or revised statement by major leaders of public higher education.

While we have not abandoned our belief that there is no simpler, more efficient and more effective way of providing access to low-income families than to restrict costs at the "front end" of enrollement in an institution, we cannot deny the realities of the past decade that have driven the median cost of tuition at our member institutions from smaller amounts in the 1960's to more than \$800 for an academic year to date. Total education costs approach \$3000 on average. A proposed tax credit in 1965 that might have been of no consequence to the vast majority of the families whose children attended our institutions then conceivably might have some positive effect today. With such matters clearly before us, the Association spent considerable effort in evaluating each of our former positions and arrived at the statement that follows. The views of the Association are summarized in a ten point statement immediately following these introductory comments.

Because of discussion that took place when representatives of higher education associations testified on June 3-4, 1981, we think it appropriate at the very outset of our statement to make the following two points. Our views are restricted absolutely to post-secondary education. Several arguments questioning the value of tax credits for

college students would not apply to pre-college education. For example, the value of a few hundred dollar tax credit vis-a-vis the cost of higher education could have a wholly different impact when applied to costs at elementary and secondary private institutions. Our membership takes no position on tuition tax credits below the post-secondary level; constitutional questions raised are for the courts to decide; the ultimate effects on public elementary and secondary institutions require expertise that our membership cannot and does not claim.

The membership's experience in post-secondary education, however, leads the Association to state with no equivocation and no conditions that it is opposed to the enactment by the Congress of legislation that would provide a tuition tax credit for families of students at the post-secondary level. Presented with a theoretical "if student aid were not cut because of tax credit, what would your position be?" The answer still remains -- "opposed." There is no way to establish a significant tuition tax credit at the college level short of a Treasury cost of several billions dollars annually. Long before the nation reaches the point where it can indulge in the luxury of several billions dollars to spend on a tuition tax credit, there are far greater needs to be met -- instrumentation for science research laboratories, renovation of classroom, laboratories and dormitory facilities, pre and post-doctoral fellowships in most all disciplines. As we watch today the obliteration or at least decimation of countless federal programs in education, training and research, it is difficult to conceive of a moment when all prior needs will have been met to allow for the final "add on" of a tuition tax credit.



The membership of the National Association of State Universities and Land-Grant Colleges historically has opposed tuition tax credit proposals as inefficient, ineffective and inequitable. Although NASULGC opposes pending legislation, it is in agreement with the objectives of Senators Packwood and Moynihan, -- to ease the burden of the costs of college for middle-income families. The Association strongly believes that existing student aid programs, particularly those enacted in 1978 under the rubric of the Middle Income Student Assistance Act, achieve these goals far better.

A. Evidence indicates that the burden of financing the cost of higher education is getting worse as colleges increase charges to meet inflation based on increased costs to the institutions, while, concomitantly, support for federal and state student aid programs is being decreased. At this time of extraordinary reductions in funds in the federal budget, including proposed reductions of \$1.215 billion dollars for Pell Grants and Guaranteed Student Loans assumed in the First Concurrent Budget Resolution for FY '82, it seems difficult to justify enacting a new entitlement program that would cost several billions of dollars. Cost estimates for for S. 550 indicate that tax credits under the bill would cost almost \$7 billion per year, when fully phased in.

Tuition tax credits would be considered tax expenditures. As defined in the Budget Act of 1974, tax expenditures are "revenue losses

attributable to provisions of the federal tax laws which allow a special exclusion, exemption, or deduction from gross income, or which provide a special credit, a preferential rate of tax, or a deferral of tax liability." (Sec. 3 (a) 3 ). Not part of the formal budget process such tax expenditures are not subject to annual review and scrutiny of programs as are student aid programs. Tax expenditures are not reviewed annually with respect to either their revenue cost or their effectiveness. Under the Budget Act, the refundable portion of S.550 would be considered a direct spending program and funds for it would be counted in function 500, covering education employment, training and social services programs. For the next several years at least, the federal government will pursue the goal of reducing and even eliminating annual budget deficits. Confronted with a loss of revenue of up to \$7 billion dollars, it seems to follow inevitably that Congress would seek to offset those costs through further reductions in existing student aid programs.

B. Unlike student aid, which is need-based and related to the student's total cost of education, tuition tax credits provide the same benefit to all recipients without regard to need or the educational costs incurred. A \$250 or \$500 dollar credit simply is too small to meaningfully help middle-income families. Non-tuition expenses(room, board, books, supplies, transportation, personal expenses) average between \$2000 and \$3000 at our member institutions, while the median tuition is \$800. The few hundred dollars that tax credits would provide families would not improve significantly the ability of students to attend college. Fiscally hard-pressed middle-income families would be much better served receiving a guaranteed student loan of up to \$2500 combined, if financial need justifies it, with a Pell Grant or other grant, loan, or work-study opportunity.

If the federal government truly wishes to insure equal educational opportunity through the provision of access and choice, we urge all members of Congress to oppose the more onerous reductions proposed for the Guaranteed Student Loan and Pell Grant Programs. Without destroying the viability of the Guaranteed Student Loan Program for low and middle income students, a result almost certain to follow acceptance of the Administration's proposals, reductions in cost can be made in the program, such as reinstating modified income ceilings.

It is important to note that tax credits would not be "received" by a student's family until many months after tuition costs have to be paid. Student aid programs, on the other hand, provide funds to students at the time payment for college costs must be made. Families most in need of assistance provided by a tax credit might be compelled to borrow funds, pay high interest rates while waiting to be reimbursed by the tax credit.

C. Contrary to the popular argument for tuition tax credits -- their simplicity of administration -- we believe that if enacted, this legislation would increase the complexity of both the tax system and the educational system. As outlined in the testimony submitted by the American Council on Education, several specific problems result from S.550, relating to the inclusion of student loan interest subsidies as an offset against tuition, and the broad discretion given the Secretary of the Treasury in the treatment of offsetting student aid against institutional expenses. The IRS would have to develop criteria and

systems to verify attendance, whether full-time or part-time, certify institutional eligibility, further define allowable expenses, verify educational costs and the amount of aid received, and develop complex regulations for the pro-ration of grants against tuition. All of this would duplicate what the Department of Education now does. In addition, tax forms would have to become more complicated, probably through the addition of a separate schedule. All of this will increase the federal bureaucracy's regulations and paperwork.

D. In addition to the Roper Poll (cited in our ten point summary) a February 1979 Gallup poll of the college population found that students, by a margin of 53% to 41%, preferred student aid grants and loans over tuition tax credits. All groups of students, Democrats and Republicans, men and women, white and non-white, supported student aid over tax credits.

We thank you for the opportunity to submit our views for the record, and would be pleased to provide further comment you would find useful.

**MEMORANDUM**

**TO:** NASULGC Executive Committee

**FROM:** Jerald Roschwald

**DATE:** February 12, 1981

**SUBJECT:** Draft statement of NASULGC concerns regarding tuition tax credits

1. Tuition tax credits are regressive.

Tuition tax credits do not assist those who need financial assistance the most. They are concentrated among families in the upper-income range, since most proposals do not contain a provision for a refundable credit for families without sufficient tax liability to benefit from the credit. In 1978, the final conference bill (H.R. 12050) would have provided a majority of benefits (54%) to families with incomes above \$25,000. Generally, tax credits for tuition are unrelated to student need, family income, or institutional costs.

2. Tuition tax credits are unnecessary.

In the past a major justification for tuition tax credits has been to ease the burden of college costs for middle-income families, particularly since they were ineligible for student assistance programs. However, the enactment of the Middle Income Student Assistance Act (MISAA) in 1978 raised the income eligibility for BEOG from approximately \$13,000 to \$25,000 for a dependant student from a family of four, and removed the \$25,000 income cap on eligibility for the in-school interest subsidy in GSL. These provisions authorized increased grant assistance to students ranging from \$200 (for a \$25,000 income family) to almost \$1,000 (for a \$15,000 income family), and made all students eligible for a subsidized loan of \$2,500 per year. The benefit of the interest subsidy alone for the maximum cumulative borrowing of \$7,500 amounts to approximately \$1,700. If tax relief is appropriate for middle-income families, it should be done through a general tax reduction bill, not through tuition tax credits.

3. Tuition tax credits are very costly.

Depending on many variables (refundable or non-refundable, inclusion of part-time students, percent of tuition covered, size of credit, whether other student aid is subtracted from tuition in determining the credit, etc.) the cost of a postsecondary credit alone is in the range of \$1-6 billion per year. Based on the regressive features of the program and other negative aspects discussed in this paper, this sum of money could be far better spent on increased funding for BEOG and other student aid programs, or other programs to improve access and choice.

Page Two

2. Enactment of a tuition tax credit may result in reduced student aid funding.

Given the momentum behind the policy to balance the budget, increase funding for defense programs, and provide for a general tax cut, student aid funding is likely to be identified as an area in which to make cuts. Funding a possible multi-billion uncontrolable, tuition tax credit entitlement will certainly affect education funding--if not by causing actual reductions, by at least preventing increases. In the views of budget and appropriation committee staff, both sides of the federal budget will be taken into account. Funding for tax credits will have to come at the expense of other education programs.

3. Tuition tax credits are ineffective in increasing access and choice.

The benefits of a tuition tax credit would not be received until the family files its federal income tax form in late winter, early spring. Most college costs would have been paid the previous September. Few families would have their behavior regarding college attendance influenced by the receipt of the credit. They would have to somehow find funds and then wait about seven months to be "reimbursed," making it unlikely that tax credits would prove effective.

6. Tuition tax credits may result in reduced student aid eligibility for needy students.

Student aid eligibility is determined by needs analysis formulas based on net discretionary income. A family entitled to a tuition tax credit will have its taxes reduced, raising its net discretionary income. This would reduce the amount of financial aid a student is eligible for, not just in federal programs, but in state and institutional programs as well.

7. The general public does not support tuition tax credits.

A July 1978 poll conducted by the Roper organization found, "the public turns thumbs down on a flat \$250 annual tax reduction for each year a child is in college--either for everyone regardless of income or for those with less than \$25,000 income." This was true not only of the total public, but also of total taxpayers, and those with 19-22 year old children. Only 9% of the total public favored a flat \$250 tax credit, while only 14% favored one limited to those under \$25,000 income.

8. Tuition tax credits may exclude the majority of students.

In most proposals, part-time students, low-income students, graduate students, and students at low or no-tuition schools receive very little or nothing. Legislation could be drafted to insure inclusion of these groups, but the costs would be untenable. Further, inclusion of these groups, and adding features to ease the regressive nature of tax credits (e.g., refundability and phase-out above a certain income) would turn tax credits into just one more student grant program. It would be more efficient to increase funding for existing student aid programs than to establish a new one.

Page Three

9. Tuition tax credits will create additional bureaucracy and paperwork.

The IRS will have to verify whether a student is in attendance, whether full or part-time, whether undergraduate or graduate, probably whether student aid was received and in what amount, the amount of tuition paid, etc. This would require the student, the parents and the institutions to fill out forms and provide data to the IRS, which can be expected to monitor and audit institutions. Income tax forms would have to be revised.

10. Tuition tax credits would further fragment educational policy-making.

Decisions on financing education would be fragmented between ED and Treasury in the Executive branch, and among the education committees and the tax-writing committees in Congress. This would make it more difficult to develop effective solutions to future financial needs of students, their families, and their institutions.

TESTIMONY OF

MARGARET H. BENNETT

LEGISLATIVE  
INFORMATION  
CHAIRMAN

ON BEHALF OF  
NATIONAL COUNCIL OF CATHOLIC WOMEN

BEFORE THE  
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT  
OF THE  
SENATE COMMITTEE ON FINANCE  
UNITED STATES SENATE

ON  
TUITION TAX CREDITS

WASHINGTON, D.C.

JUNE 17, 1981



Mr. Chairman, Members of the Committee, my name is Margaret H. Dennett. I am Legislative Information Chairman for National Council of Catholic Women; we have a membership of approximately 10 million women throughout the country and strongly favor tuition tax credits for parents of children attending non-public schools. 30% of non-public schools are Catholic, according to the Coleman report.

I am also a mother of 5 children ranging in age from 13 to 28; these children have attended public and private schools both intercity and in a suburban area. While they were attending public school in the city of Pittsburgh, I served as a delegate to the Pittsburgh Board of Education for a two year period.

As for tuition tax credits, I feel strongly that this type of legislation is long overdue. I consider it a basic parental right to choose whether a child attends a public or private school. I have done exactly that with my own family, but I was financially able to do so. However, I feel all parents should have that option.

One of the greatest resources we have as a nation are our children, and the education of these young people should be of prime concern for us as adults. Diversification in education is the one thing that has made this country the great nation that it has been. Because of the rapid elevation in the cost of living, many parents especially in the low and lower middle income level no longer have a choice between public and private education for their children. They simply cannot afford to consider the private school.

The highest priority of this administration appears to be to deal with basic economic problems facing our country -- inflation and stagnant economic growth which is adversely affecting employment.

-2-

However, before deciding budget cuts and reducing taxes, consideration should be given to what programs must be kept and enlarged upon. Educating our young is just such a program. In order to survive and move ahead into an even higher technological age, we must have people well educated and trained to fill these positions.

Recommendations:

- 1) Work to improve conditions and learning experiences in public schools where needed. Look to "good schools" for direction.
- 2) Pass tuition tax credit legislation and give all parents the basic right to choose their child's education.
- 3) Target areas where our nation needs trained personnel (examples: science and engineering) and provide incentives and education grants to encourage bright students to go into these areas of higher education.

According to James Coleman's report, good schools do make a difference. Good schools are those that make strong academic demands on students and provide an environment for learning. The Coleman study identifies the kinds of policies that produce student achievement. As members of this subcommittee on Taxation and Debt Management, I am sure each of you has carefully read that entire report and the fact that the data reflects upon the accomplishments and achievements of the private education sector.

I speak from my own personal experience with my children who have attended

an Intercity public grade school

an Intercity private grade school

-3-

Suburban public high school

Suburban private grade school

2 private high schools, 1 city, 1 suburban.

The school was selected to meet the individual educational needs of that particular student. That choice was mine. However, if tuition tax credits legislation is not passed, I fear the private schools will indeed become the segregated white school for those upper middle class or wealthy families who can afford tuition.

We must provide choices to the minorities and poor of this country.

Mr. Chairman and Members of this Committee, on behalf of National Council of Catholic Women I ask you to pass tuition tax credit legislation and give all parents the basic right to choose their child's education.

Thank you.

RESOURCE:

James Coleman, Thomas Hoffer, and Sally Kilgore, Public and Private Schools, a Report to the National Center for Education Statistics by the National Opinion Research Center, March, 1981.,

JUN 1 1980

June 3 and 4, 1981-Senate Bill 550

5613 W. Houston  
Spokane, WA 99208  
June 8, 1980

Robert E. Lighthizer,  
Chief Counsel  
Committee of Finance  
Room #2227  
Dirksen Senate Office Building  
Washington, D. C. 20510

Gentlemen:

I am writing to urge your support of S.B. 550, the Tuition Tax Credit Proposal.

We have one child in a Catholic school, and find that this provides an important alternative for us as parents. He is very bright and also very active, and needs special attention and gentle but firm handling.

Are you aware of the studies that show that public schools spend an average of \$1,750 per student each year, and private schools an average of \$850 per student per year. If the government were to grant a tax credit equal to just half the average private school per pupil expenditure, it would amount amount to \$450. This would still save the taxpayer approximately \$1300 in fees for my son alone.

It is, in these inflationary times, increasingly difficult to manage the tuition each year, and I can easily foresee the time when we will have no choice but to send our son to public school, but I think the system will be poorer for it, not only in tax dollars but in the lack of diversity which will occur if the public school system has a monopoly on education in this country.

I would like to urge the finance committee to approve this bill and forward it to the Senate for a favorable vote.

Thank you.

Geraldine Sombke  
(Mrs. Dennis C. Sombke)

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Ethics and Public Policy Reprint • 28

December 1980

# Christian Schools, Racial Quotas, and the IRS

Peter Skerry

This reprint is one of a series published by the Ethics and Public Policy Center. These reprints make available to a wider audience essays that offer thoughtful perspectives on issues of domestic and foreign policy. Like original Center studies, the reprinted essays are written by authors who recognize the validity of fundamental Western values and attempt to combine moral reasoning with empirical analysis.

\* \* \* \* \*

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Ernest W. Lefever, President  
ETHICS AND PUBLIC POLICY CENTER  
1211 Connecticut Avenue N.W.  
Washington, D.C. 20036

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# Foreword

THE CELEBRATED PLURALISM OF American society is less evident in the teaching of our children than in many other areas of our national life. Under our compulsory education laws the public school system enrolls about 90 per cent of elementary and secondary pupils; the remaining 10 per cent attend private schools.

The great majority of non-public schools are sponsored by churches. For many years the Catholic Church has provided alternative schools, as have some Lutheran, Mennonite, and other religious groups. Since the mid-1960s we have witnessed a sharp rise in "Christian schools," organized and supported by fundamentalist Protestants. They are found in all parts of the country and have been called the fastest-growing segment of private education today. Their pupils may now total 900,000, about 20 per cent of the overall number attending non-public schools.

To gather information for this essay, Peter Skerry, a graduate student in sociology at Harvard, visited Christian schools in the central Piedmont region of North Carolina for seventeen days in February 1979. After intensive interviewing and observation he produced a solid, thoughtful, and informative analysis of the motivation and objectives of the Christian-school movement.

Among his conclusions are that these schools were established primarily out of religious, not racial, convictions (parents were concerned about "creeping humanism" and moral relativism in the public schools) and that the quality of instruction they offer matches or exceeds that given in most public schools.

But the Internal Revenue Service persists in seeing the Christian-school movement largely as an attempt to avoid racial integration. It has developed guidelines that prescribe racial quotas, and if these

quotas are not met, the IRS feels led to question "the sincerity of religious beliefs" of the school organizers. This opens the way for the withdrawal or withholding of tax-exempt status. The IRS assumes, says Skerry, "that tax exemption is a government subsidy that . . . triggers affirmative action requirements." The big questions in all this involve not only the tax status of religious schools but also the morality of racial quotas and the dimensions of religious freedom in a pluralistic setting.

This is one of several essays on educational issues published by the Ethics and Public Policy Center in its reprint series. In another, *Washington vs. the Public Schools*, J. Myron Atkin, dean of the school of education at Stanford University, traces the increasing penetration of elementary and secondary schools by the federal government "to achieve some broad social purpose or to advance the ideology of a politically powerful minority." Senator Daniel Patrick Moynihan deals with essentially the same problem in the realm of higher education in *Washington vs. the Universities*. Moynihan asserts that "the federal government has acquired the power to shut down any university it chooses" by withholding funds if the institution fails to comply with one or more of a myriad of regulations accompanying grants from Washington.

Another essay in this series is *Patterns of Black Excellence*, a study of eight successful black schools by Thomas Sowell, who is currently a senior fellow at the Hoover Institution of Stanford University.

These essays, like all other Center publications, are presented as a service to the interested public. The selection of facts and the views expressed are the responsibility of the authors.

ERNEST W. LEFEVER, *President*  
*Ethics and Public Policy Center*

December 1980



# Christian Schools, Racial Quotas, and the IRS

PETER SKERRY

**D**ECLINING public school enrollments have in recent years been accompanied by the sustained growth of non-public schools. Indeed, since 1975 the latter have registered enrollment gains of 1 percent or more each year. But among these the fastest growing—and least understood—are the schools sponsored by fundamentalist Protestants. Christian schools, as they are typically called, have been described by one official of the now-defunct Office of Education as “the fastest growing segment in private education today.” At the same time, because these schools typically shun the inquiries of outside organizations, we have no hard evidence on how widespread they are. Nevertheless, data presented in a recent study sponsored by the National Institute of Education suggest that over the decade from 1965 to 1975 Christian school enrollments may have trebled. The same study goes on to estimate total national enrollments in fundamentalist-oriented schools at 900,000—or about one-fifth of all non-public school enrollments.

Though most prevalent in the South, where the traditions of fundamentalism are the strongest, Christian schools are to be found in all parts of the country. There are, for example, some 60 of them scattered across Wisconsin. In 1979 alone, 89 new schools opened

in New York State. Christian schools are also found in rural Ohio and Vermont, as well as Southern California. Nevertheless, their prevalence in the South and their emergence around the time of public school desegregation have meant that Christian schools operate under a cloud of suspicion. They are labeled "segregation academies" by those who insist they were established to avoid desegregation. There is a marked tendency to dismiss the sincerity of the people involved. As Clarence Mitchell, former Washington lobbyist for the NAACP, puts it: "Every school that's been started to evade desegregation has called itself Christian. That's not my idea of being Christian." This view received its fullest expression in August 1978 when the Internal Revenue Service proposed affirmative-action guidelines intended to revoke the tax-exempt status of these schools. The furor in response to these proposals compelled the IRS to hold three days of stormy hearings in Washington in December 1978. The agency received over 120,000 letters of protest. And as one agency official put it: "The response is more than we've ever received on any other proposal." Eventually Congress was drawn into the fracas. It held its own hearings, and by the fall of 1979 had enacted legislation that blocked—at least temporarily—implementation of the guidelines. For the present, then, the threat of these proposals has been halted; but the misapprehensions informing public policy toward Christian schools persist and have yet to undergo dispassionate scrutiny.

During February 1979, I visited Christian schools scattered across the central Piedmont region of North Carolina for 17 days of observation and conversation with parents, students, and ministers on all sides of the issue. My experiences indicate that skepticism toward the religious orientation of these schools is altogether unwarranted, and furthermore, that the effort to reduce their emergence to a matter of racism is a gross oversimplification.

### **Christian schools in North Carolina**

Some Christian schools operate independently of any specific congregation, but for most this does not seem to be the case. And certainly all that I visited in North Carolina were founded and operated by local churches. In most cases the congregations were in existence several years before the school was started, though in one or two instances the church and school began at the same time. Most of the schools I visited were started within the past ten years, although a couple are considerably older. In many ways the bound-

ary is blurred between church and school. Even the most established schools share some facilities with the sponsoring churches, and frequently the school principal is the pastor, or a young ordained minister who serves as the pastor's assistant. On paper, the Christian school typically does not exist as a separate, incorporated entity, but rather is headed by the same board of deacons as the congregation as a whole.

Like the congregations that sponsor them, Christian schools are generally modest in size. The average in North Carolina is about 200 students, though some are as small as 30 or 40 and a couple as large as 800. These figures include all age groups, for the typical Christian school in North Carolina and elsewhere includes all grade levels. Moreover, all the schools I visited, and apparently most in North Carolina, provide day-long child care for preschoolers—in some cases infants as young as six months—as well as after-school care for school-age children. North Carolina has one of the highest rates of female labor-force participation, and the preachers who run these schools view child care as an important part of their ministry.

The facilities offered by the schools vary with the age and prosperity of the congregation. One or two are housed in million-dollar plants that rival most public school facilities. But the typical school is much more modest, housed in one or two buildings adjacent to the church, or sharing quarters with the church itself. In basketball-conscious North Carolina, a gym is a top priority and probably most expensive single undertaking of any school, and all the schools I visited have or anticipate building one. Some schools are housed in neat brick buildings complete with lawns and shrubs, but others are built on concrete slabs with corrugated metal walls and roofs, giving them a rough, unfinished appearance. Inside the typical school the furniture is adequate but second hand; the student's desks and bookshelves are constructed of plywood and obviously the work of some volunteer carpenter. There is generally no bell system, and the clocks on the walls come from someone's kitchen. Home-made curtains hang in the windows. Like classrooms everywhere, the walls are covered with the letters of the alphabet, exemplary work, drawings, and posters—as well as Bible quotations. The dominant impression that remains after visits to several such schools is that while they may lack the professional air of modern school buildings with designer-coordinated color schemes and expensive equipment, they do feel pleasantly homey and non-institutional.

### **Independent Baptist congregations**

By far the most salient characteristic of the schools I visited is that they are operated by independent Baptist congregations. In this as in most other respects they are typical of Christian schools throughout North Carolina and, indeed, the nation. This is an important point frequently ignored in the debate over these schools. When critics have bothered to take the movement's religious orientation seriously, they have been content to describe it as "fundamentalist." This is of course true, but it neglects to explain the predominance of Baptists in the Christian schools movement.

Throughout their history Baptists have been fiercely protective of their right to practice their beliefs free of outside interference. Their origins can be traced to the social and political turmoil of sixteenth and seventeenth-century England when, along with the Puritans and Quakers, Baptists formed part of a generalized opposition to the state-established Church of England. At a time when temporal rulers across Europe were imposing their personal religious beliefs on their subjects, the Baptists demanded complete separation of church and state. As their name suggests, they vehemently opposed infant baptism, which they viewed as the device by which unwitting souls were conscripted into state churches, and they insisted upon adult baptism as the free acceptance of Christ by the fully-informed individual. Many Baptists came to America in search of the religious liberty they were denied in their homeland. But their struggle with state authority was to continue. Roger Williams battled with the elders of the Massachusetts Bay Colony and was finally forced to flee to Rhode Island, where in 1639 he formed what is generally regarded as the first Baptist church in America. In the South, Baptists gained an early foothold in North Carolina, which served as a refuge for dissenters fleeing the established Anglican Church of Virginia.

Unwilling to grant authority over their religious beliefs to political rulers, Baptists have been equally adamant about ceding their religious freedom to church officials. Throughout their history Baptists have been fervent congregationalists, insisting that the ultimate and sole authority over church theology and affairs rests not with any hierarchy but with the members of each congregation. This is perhaps the basic distinction between the Baptists and their long-time rival as the church of the common man, the Methodists, who are organized along more rigid, hierarchical lines and have not played an important role in the Christian schools movement.

In recent years, the Southern Baptist Convention, for decades

little more than a consortium of autonomous congregations to raise funds for missionary work, has presented a challenge to such notions of Baptist congregationalism. As the Convention has edged ever so slightly toward the Protestant mainstream in its theology, and simultaneously begun to present itself as a denomination-wide organization representing all Baptists, some congregations have reasserted traditionalist values and split off from the Convention, declaring themselves "independent Baptists." The sentiments underlying this schism are suggested by the words of one mother reared in a "regular" Baptist church: "I read in the newspaper that the Southern Baptist Convention just endorsed the ERA. Now, no one in the Convention ever asked me how I feel about the ERA. Who told them they could speak for all Baptists?" This woman now belongs to a small independent Baptist church near Charlotte.

Implicit in this notion of congregationalism is the democratic ethos that pervades all church activities. Nearly every decision affecting an independent Baptist congregation, after approval by the church deacons, is brought up for a vote before the entire congregation. The decision to buy a new church piano or to start a school would be discussed and voted on by those present at Sunday morning services. And once a year the church's budget, including the pastor's salary and expenses, is brought up before the congregation for discussion and approval.

Sunday morning services are clearly the high point of the week, but there are several other well-attended activities. Sunday mornings begin with Bible study for adults and children. Later that day the congregation reassembles for evening services. During the week most members attend Wednesday night services. Thursday is visitation night, when members visit those who have been ill or unable to come to services. One evening a week is devoted to choir practice, and Friday to church-league athletic competition. In addition to enthusiastic participation in these organized activities, a spirit of eager voluntarism pervades these congregations. Generally too poor to hire outside help, they rely on member initiative to mow the lawn, paint the trim, sew the curtains, and in many instances construct the church itself. A good example of what I'm talking about occurred when, during my visit, a freak storm dumped a foot of snow over central North Carolina. The next morning—a Sunday—several families arrived unbidden to shovel out the church grounds.

Such voluntarism is not just a matter of sociability or community spirit; it springs from deeply held religious beliefs. Theologi-

cally, independent Baptists are similar to other fundamentalist denominations in that they believe in the Bible as literally the word of God, accepting the biblical account of creation and vehemently rejecting any hint of the theory of evolution. Most believe we are now in the reign of the anti-Christ, described in the Book of Daniel as preceding the imminent return of Christ. In preparation for that day of judgment these Baptists observe a "principal of separation" that requires them to reject such "wordly" habits as tobacco, alcohol, drugs, card playing, gambling, dancing, coed swimming, listening to rock music, going to movies, and in some cases watching television. In some ways they resemble the Amish and Mennonites, with whom they share a literal interpretation of the Bible and extremely conservative social views. But unlike these other groups, the independent Baptists have chosen to live and proselytize in the secular world. As they frequently put it, they live in this world—but are not of it. All the congregations I visited enthusiastically contribute to the support of missionaries scattered all over the world, many of whose pictures are proudly displayed on the walls of the church.

Thus, for a good many of the families I met, the congregation is the focus of their social as well as spiritual lives. Because they have a say in its direction and perhaps because the congregations are rather small, members feel their contributions—or lack thereof—really make a difference. As one young mother explained to me, "If we didn't tithe, there'd be a hole in the budget." This sense of efficacy and responsibility is not easily found in many institutions today. The Lamar Society, a group of Southern liberals frankly critical of Christian schools, makes the same observation in its study, *The Schools That Fear Built*:

-A local fundamentalist church... is both homogeneous and highly stable. It is the only organization which its members control at a time when they feel government institutions are out of control. It is often the only structure they trust and certainly the one in which they feel most comfortable, since much of their social as well as their spiritual life revolves around it.

### **A typical Christian school**

As an integral part of this kind of community of faith, it is not surprising that fundamentalist religious and social values pervade these schools. The day begins with prayer, and pledges to both the American and the blue-and-white Christian flag. Each class begins

with prayer, and meals with grace. School-wide chapel meets once or twice a week; and although Bible study is only one part of the curriculum, all subjects are taught from a "Christian perspective." In contrast to what is continually referred to as the "secular humanism" pervading the public schools, these schools emphasize the essential depravity of man and the absolute necessity of accepting Christ for salvation. No effort is spared in rooting out all traces of the secular humanist inclination to place man rather than Christ at the center of all human endeavor. Textbooks are scrutinized for objectionable material—for example, the new "nonsexist" reading materials are as offensive to these fundamentalists as science texts containing evolutionary theory. For a while these schools used older editions of public school texts, but as these grow increasingly scarce, they are turning to Christian publishing houses.

One of the most distinctive features of these schools is the strict discipline code. Each school I visited had a written list of rules and regulations backed up by threat of corporal punishment or expulsion. Insubordination or disruptive behavior of any sort is simply not tolerated. Even in the elementary grades, youngsters must stand when addressing teachers and use "sir" or "ma'am." It goes without saying that students are forbidden to smoke, use drugs, listen to rock music, go to the movies, or dance. Instead of a prom there is a senior banquet. And as for boy-girl relations, even hand-holding is prohibited.

Each school also has a detailed dress code, calling over and over for "modesty" and "good taste." Girls must not wear makeup or pants; other strictures prohibit long hair, sideburns, moustaches, beards, tank tops, blue jeans, bell bottoms, tie-dyed clothing, male jewelry, sandals, or stenciled T-shirts.

It is hard to read such a list and not feel that these schools must be full of rebellious youngsters and obsessive adults. But this is not at all the case. After all, these rules are merely the reflections of everyone's values, teachers and parents alike. Willingness to abide by them is the primary admission criterion, much more important than the academic one. As a result the interaction between teachers and students is marked not by fear and intimidation but by mutual respect and friendliness. Students of all ages are well behaved without anything like the constant surveillance so necessary in the public schools. Even the largest schools have no need of that infamous administrator, the assistant principal, who serves as the de facto disciplinarian in public schools. Little or no time and energy are spent in ritualized negotiations over the rules. Everyone knows

what they are, and if a student consistently refuses to abide by them (which does occur now and then), he or she is simply asked to leave.

### **Christian teachers and Christian parents**

The teachers too must accept strict rules. Of paramount concern to the pastors, who take ultimate responsibility for these schools, are the religious beliefs of their teachers. Nearly all the teachers in the schools I visited had been certified by state authorities; indeed, many of them were former public school teachers who for one reason or another had left the public sector. But as the pastors readily admit, academic qualifications are really of secondary importance. The first question they ask prospective teachers is the nature of their religious belief. All the pastors I talked with require their teachers to be born-again Christians, sign the congregation's doctrinal statement, and abstain from the same list of worldly practices that the students do.

In addition, Christian-school teachers must be willing to settle for extremely modest pay. The typical salary in the schools I visited is around \$6000 for the academic year; a few schools pay even less. On occasion an unmarried woman who must support herself is paid slightly more. More frequently, male teachers who must support families are paid more than their female colleagues—an arrangement everyone I spoke to readily supported. But even these male teachers barely reach \$7500 per year. In general, Christian-school salaries are a good deal less than those in elite private schools in the South, and easily half of public school salaries. Not only that, but they include no benefits such as medical or life insurance or retirement plans.

Teachers are crucial to any school, but especially to Christian schools. Without their sacrifices the Christian schools could not remain financially viable. This contributes to the clear sense of purpose displayed by the teachers I talked to. Moreover, they see themselves, and are viewed by the congregation, as pursuing a religious mission. Their sacrifices earn them a special place in these communities of faith. Certainly these are the factors that explain the dedication and openness of the Christian-school teacher. But if we are to believe the critics of these schools, this is a dedication grown out of the race prejudice believed to be the real force behind these schools. And perhaps racist sentiment could be perceived as sufficient to elicit the financial and other sacrifices made



by parents who send their children to these schools. But it strains credulity to suggest that so many people, over so long a period, would be willing to accept such cuts in salary and such restrictions on their behavior just for the privilege of teaching someone else's white children.

By any standard, the involvement of parents in Christian schools would have to be described as intense, in most cases flowing directly from their commitment to the congregation. In addition to working as volunteers, families make considerable financial sacrifices on behalf of the schools. Beyond their weekly tithe to the congregation, parents with children in the schools pay tuition ranging from about \$500 to \$800 per year for each child. Though relatively modest—about half the tuition at traditional college-preparatory schools in North Carolina—this is frequently a strain on these predominantly working and lower-middle class families. Nevertheless, many sacrifice further by making pledges to capital fund drives launched at one time or another by all the schools, in most cases taking out personal bank loans to do so.

To bear these burdens, many mothers must work—a necessity that conflicts with their firm conviction that women belong in the home. A common compromise is to work in the schools as teacher aides, secretaries, cafeteria workers, and very often bus drivers. In schools I visited, virtually all the helpers are parents of children attending the schools. Thus it is not surprising that parents feel these schools belong to them; after all, their sacrifices help keep them going. And the parents I met seemed to enjoy feeling needed. One couple explained that they had had a choice between sending their son to a small, struggling Christian school or a large, well-established one. They chose the former, because they felt a commitment to the school was a commitment to their son's future. As they put it: "We are really in on the ground floor of something good."

When asked specifically why they reject the public schools, parents make it clear they need the Christian schools as much as the schools need them. Most frequently cited is the Supreme Court's 1963 school-prayer ban. A few parents mention a recent controversy over the singing of Christmas carols in public school assemblies. Many complain of the virtual disappearance of the pledge of allegiance from the public schools. A few are troubled by sex education. Such changes are seen by fundamentalist parents as direct assaults on God and country, the pillars of their universe.

On another level, parents are displeased with what they've seen

or experienced as the declining academic standards of the public schools. They recite the familiar litany of open classrooms, curriculum fads, wide-spread social promotion, declining test scores, and illiterate high school graduates. Neither products of higher education themselves nor especially concerned that their children be, the salesmen, millworkers, and auto mechanics who send their children to Christian schools are particularly incensed that the public system does such a poor job of teaching the basics, and they point with pride to the impressive record of the Christian schools in teaching reading and math skills. In every school I visited, four-year-olds were prepared so that by the first grade most were reading above grade level.

Furthermore, as is suggested by the dress codes mentioned, these parents are rejecting the youth culture they feel now dominates the public school scene. One young mother in Charlotte explained why, after two and a half years in the public schools, she had decided to change to a Christian school. She had been quite pleased with the desegregated public school her son had gone to for first and second grade, but the following year the family moved, and he had to attend a different school—which she felt was academically inferior and rife with petty thievery and vandalism. But the last straw, she told me, was when she discovered that each day the children were allowed to play records for an hour, and her 9-year-old son had become infatuated with a rock group specializing in ghoulish costumes, demonic lyrics, and vomiting blood on its fans. Over the Christmas holidays she and her husband placed the child in a Christian school.

Like working and lower-middle class parents elsewhere, these people tend to be rather protective of their children—inclinations which are of course reinforced by their religious beliefs. As one father of five children, all of whom attend the same Christian school, said to me: "My son doesn't know ten people I don't know, and if he does, I want to meet them." For such parents, to send their children to the public schools would be to yield them up to institutions that will expose them to violence, drug and alcohol abuse, disrespect for authority, and sexual experimentation. These are parents who, it should be remembered, reject smoking and dancing as wordly sins. They see the public schools as institutions over which they can exert little control and which in turn seem unwilling to control their children.

The social problems of the public schools are also paramount to parents who are less devout. Indeed, a number of families who

send their children to Christian schools are not actually members of the congregation, though they come from similar Protestant denominations. Many turn in desperation to the Christian schools as strongholds of values and standards of behavior long since gone by the boards in the public schools. One mother told me that in junior high school her son had been intent upon "drinking up all the liquor and smoking all the marijuana in town." When it came time for high school, she persuaded him to go to a Christian school—which succeeded, somewhat beyond her expectations, in turning him into a born-again Christian headed for the local Bible college. She was grateful to the school for turning him around, but unwilling to follow him into the fold—as of course the congregation hopes will happen when they accept such students.

### **Desegregation and Christian schools**

It would be misleading to say that concerns over desegregation do not figure into the shift to Christian schools. Some of these parents were scared away or simply fed up with the turmoil surrounding desegregation in cities such as Charlotte, where for months police were required to quell disturbances between white and black youths. Other parents complain of petty thefts, vandalism, and physical intimidation of their children in integrated schools. It is always difficult to assess the extent of such problems and their relation to desegregation efforts. Less problematic, however, are the concerns expressed by numerous parents about safety on public school buses. With widespread busing to achieve desegregation of county school systems, North Carolina has had to rely on a high proportion of teenage bus drivers, who work cheaply but also have higher accident rates. By contrast Christian schools across the state boast that they rely on adult drivers, many of whom are mothers. Another problem parents have had is with paired-school schemes that arose from desegregation. When it came time for one third-grader to leave the desegregated neighborhood school he had attended for four years, his misgivings, along with the inconvenience of the crosstown bus ride and his parents' other doubts about the public schools, convinced this family and others like it to make the change. If their son had to go to a different school, they reasoned, it might as well be one over which they would have some influence.

Of course, as the pastors will readily admit, some parents send their kids to Christian schools because they just don't like blacks.

But for most, desegregation is only the proximate cause of their abandonment of the public schools. Perhaps desegregation symbolizes the social turmoil they see pervading the public schools and the alien values they see dominating the culture; but for these "ordinary working people," as they describe themselves, not accustomed to voicing discontent to public officials, it is more like the last in a long series of affronts they have endured for years. And for these independent Baptists who refuse to take orders from other Baptists, let alone federal judges and bureaucrats, it is only natural that their accumulated grievances would find expression in the one institution they feel is theirs, the church.

Those who reject this interpretation of the Christian schools movement and reduce them to segregation academies must explain, among other things, why none of the schools I visited displayed the least evidence that racist doctrines are taught. In fact, they all espouse open admissions policies and in several schools black children are enrolled. Those who see nothing but racism lurking behind Christian schools would do well to ponder the development of one school described in a recent *Washington Post* article. The Riverdale Baptist High School in Prince George's County, Maryland was founded in 1971. In 1972 court-ordered busing was implemented in the county, and that year the population of the school jumped from 50 to 500. By 1977, when desegregation was in full swing, the school's popularity had grown to the point where it moved into impressive new quarters with an enrollment of 1300 students—20 percent of whom were black.

Those who routinely dismiss Christian schools as segregation academies must also explain why these schools are so radically different from public schools in terms of curriculum and religious orientation. Or, for that matter, why they are so fundamentally different from elite prep schools—which Christian parents dismiss as glorified public schools. Finally, skeptics need to be reminded that these are not the so-called "private" schools that miraculously appeared in the wake of public school closings in states such as Virginia, Louisiana, and Mississippi in response to the first Southern desegregation orders. The latter were supported by tuition grants, textbooks, and transportation supplied by the states, and were in fact the same segregated public schools that had always existed, hiding behind a "private school" label. Christian schools, by contrast, exist solely through the voluntary efforts of the congregations that support them, who as staunch supporters of the separation between church and state, take not a dime of public funds.

Perhaps the social forces behind the Christian schools can be seen more clearly by examining the events in Kanawha County, West Virginia a few years back. In the fall of 1974 a sometimes violent controversy erupted over the county school board's adoption of innovative "language-arts" textbooks featuring unexpurgated excerpts from modern literature—complete with the usual profanities and challenges to traditional values. The protest was spearheaded by a school board member, Mrs. Alice Moore, the wife of a local fundamentalist Baptist minister, who had been elected as an opponent of a proposed sex-education program. From the hills surrounding Charleston there emerged three fundamentalist preachers to share the spotlight with Mrs. Moore—one of whom "vowed before God and man to kick out those filthy books that's in our schools." Just as in North Carolina today, the public schools were denounced as "anti-Christian" and "havens of creeping humanism." And in the wake of bombings, a miners' strike, and school boycotts, several Christian schools were set up. But through all this, the issue of race was nowhere in evidence. Indeed, Charleston's small black community had several years before been peacefully and uneventfully integrated.

Kanawha County is only the most dramatic episode in a virtual fundamentalist counter-revolution evident in schools across the nation. In Nassau County, New York a school board was recently persuaded to remove from library shelves eleven books denounced as "anti-American" and "anti-Christian." The *New York Times* reports that in Indiana, Iowa, California, and New York, fundamentalists have begun to challenge the teaching of Darwinian evolution. And in the early 1970's, born-again Christians had a lot to do with blocking implementation of "Man, A Course of Study"—the multimillion-dollar social studies curriculum developed by the National Science Foundation. All these are part of a more general resurgence of conservative and fundamentalist churches throughout the country. As Dean Kelley points out in his provocative book, *Why Conservative Churches Are Growing*, Seventh-Day Adventists, the Church of the Nazarene, Jehovah's Witnesses, and other fundamentalist groups have been growing at rates of up to 9 percent a year, at a time when mainstream denominations such as Methodists, Presbyterians, and Congregationalists have experienced unprecedented declines. Nor is the phenomenon limited to whites; some of the groups mentioned here have a strong following among blacks as well. On all these fronts, at least since the late 1960's, social and religious conservatism has been on the march. To reduce this con-

servatism—and the Christian schools that have emerged from it—to racism is simply to ignore two decades of social and cultural upheaval.

### The IRS proposals

In contrast to the view we have been developing, the Internal Revenue Service has offered its own interpretation of the Christian schools movement. After years of prompting by civil rights activists and public-interest law groups such as the Lawyers Committee for Civil Rights Under Law, the IRS in August 1978 issued proposed guidelines to determine “whether certain private schools have racially discriminatory policies as to students and therefore are not qualified for tax exemption under the Internal Revenue Code.” The guidelines stated:

A prima facie case of racial discrimination by a school arises from evidence that the school (1) was formed or substantially expanded at or about the time of desegregation of the public schools, and (2) has an insignificant number of minority students. In such a case, the school has the burden of clearly and convincingly rebutting this prima facie case of racial discrimination by showing that it has undertaken affirmative steps to secure minority students. Mere denial of a discriminatory purpose is insufficient.

The IRS went on to define “an insignificant number of minority students” as “less than twenty per cent of the percentage of the minority school age population in the community served by the school.” Schools against which such a prima facie case had been established—the so-called “reviewable schools”—would lose not only their exemption from Federal taxes (including social security and unemployment contributions), but of more crucial importance, the right of individual donors to deduct charitable contributions to the schools from their federal income taxes. And in its specific refusal to exempt church-sponsored schools, the IRS directly challenged the sincerity of the religious sentiments I have identified as central to the Christian-schools movement. While any government agency is entitled to determine the sincerity of religious beliefs to which it accords special benefits, in this instance the IRS proposed to do so *not*—as wisdom and prudence would seem to require—after detailed inquiry and formal proceedings, but through summary administrative action triggered by an arbitrarily established quota. Thus the IRS reduced a multifaceted social phenomenon to a simple case of race prejudice. Moreover, as it makes plain in

these proposals, the agency would place the full burden of proof directly on the schools. Assuming in advance the guilt of reviewable schools, it would act first and ask questions later. Thus the small and struggling schools, like those I visited in North Carolina, would be forced not only to undergo the expense of litigation, but to do so while deprived of the special tax status on which their existence substantially depends. In brief, these proposals posed a mortal threat to Christian schools.

In response to the furor created by their proposals, the IRS in February 1979 issued "revised proposed guidelines." These softened the more abrasive aspects of the original, but the fundamental thrust remained—the agency still assumed the guilt of schools not meeting its affirmative action quotas. The revised guidelines offered six examples of the kind of "affirmative steps" reviewable schools would need to take to regain their special tax status:

- active and vigorous minority recruitment programs;
- tuition waivers, scholarships, or other financial assistance to minority students;
- recruitment and employment of minority teachers and other professional staff;
- minority members on the board or other governing body of the school;
- special minority-oriented curricula;
- participation with integrated schools in sports, music, and other events and activities.

The most striking thing about these proposals is their inapplicability to Christian schools such as those I visited—all of which would lose their tax privileges if the IRS had its way. Each of these proposals would impose unreasonable burdens on these schools. Perhaps most egregious is financial assistance to minority students. As should be evident by now, the families who send their children to Christian schools are of modest means. The schools themselves live a hand-to-mouth existence, relying on tuition payments to cover operating expenses. Very little, if any, financial assistance is available to presently enrolled students. And whatever is available is certainly not enough to meet the IRS demands. By contrast the nation's traditional college preparatory schools—the "independent schools" as they like to be called—have with relatively substantial amounts of financial aid been able to attract enough black students to account for just over 4 percent of their total enrollment. Viewed in this light, the IRS quotas on Christian schools seem neither reasonable nor equitable.

The proposal that Christian schools recruit minority teachers is

also misguided. Relevant again is the experience of the nation's independent schools, which report great difficulty in attracting minority teachers away from relatively high-salaried public sector jobs. Certainly, Christian schools would be at an even greater disadvantage. And aside from financial considerations it seems doubtful that many educated minority teachers would be willing to abide by the strictures Christian schools place on staff.

Finally, the notion that Christian schools must place minorities on their boards seems wrongheaded. The boards of these schools consist of members of the congregations—usually the pastor and his deacons. To require that minorities be included means that individuals who have not participated in and contributed to the activities of the congregation must now be granted the status and prerogatives of its most respected members. It also means the IRS does not respect the right of blacks and whites in the South to go to separate churches. The fact that they do, and have for many generations, is scarcely the simple result of white racist machinations the IRS seems to imply.

### **Black churches and public schools**

Separate black and white churches date from the post-Civil War era, prior to which slaves were seldom allowed to establish their own religious institutions, and were compelled instead to worship under the watchful eyes of their masters. As religious historian Sydney Ahlstrom demonstrates, the typical ante-bellum arrangement was integrated but paternalistic churches where blacks, frequently outnumbering whites, were confined nevertheless to separate areas of the church. There they were required to sing the songs and pray the prayers of their masters. To be sure, slaves worshipped in their own way whenever they could—the so-called “invisible institution”—but only the free blacks in the cities were allowed to establish their own churches, such as Richard Allen's African Episcopal Methodist Church, founded in Philadelphia in 1816.

Upon emancipation, the freedmen eagerly and immediately set up their own churches, which served in the difficult years that followed as important refuges from a hostile society. But by the 1960's the black church had, in the view of some, begun to outlive its usefulness. In 1963 E. Franklin Frazier could characterize the black church as “the most important institutional barrier to integration and the assimilation of Negroes.” Today, of course, such



pronouncements appear curious and dated, as black leaders reassert the strengths and uniqueness of the black religious experience. Rev. Joseph Roberts, successor to Rev. Martin Luther King, Sr. at Atlanta's Ebenezer Baptist Church, describes his own changes:

I graduated from seminary in 1960 when integration was still big. I was the pastor of two integrated churches—trying to help the people live together as Christians—and almost denigrating the black experience in so doing, compromising by allowing the church service to be what I had learned in seminary: a modern version of the English Puritan worship of the 17th and 18th century. And then sort of disavowing who I was as a black person.

As the saying goes, the most segregated hour of the week is 11 o'clock Sunday morning. It would be wrong to ignore the influence of racism in the development of racially separate churches—especially in the South. But it would be foolish to ignore the fact that the continuing separateness of black and white churches reflects the needs and desires of blacks as well as whites.

Such factors may contribute to the difficulty Christian schools have in drawing sufficient numbers of black students to satisfy the IRS. Critics seldom consider the possibility that many black parents may not be interested in what these schools have to offer. They typically assume that black people are being denied something they desperately need and want—rather as if these were elite prep schools, the key to success. In fact, although Christian schools are successful at teaching basic skills in the lower grades, beyond this their accomplishments are minimal. The working and lower-middle class parents who rely on these schools have rather modest ambitions for their children—either Bible college, which may or may not be accredited, or no college at all.

By contrast, the educational aspirations of blacks are intense. As sociologist Sara Lawrence Lightfoot puts it, among blacks "education is not only valued, but formalized schooling is often seen as the panacea." This eagerness for education has translated in recent years into unprecedented increases in the educational attainments of young blacks. Black college enrollment from 1965 to 1976 grew by almost 400 percent, while white enrollment during the same period increased only 62 percent. Today the percentage of working and lower-middle class blacks attending college is actually higher than their white or Hispanic counterparts. Thus it seems doubtful that black parents would flock to the meager educational offerings of the Christian schools.

This is borne out by the fact that Christian schools which have

responded to the IRS pressure by actively recruiting black students have in many cases been unable to do so. For example, the headmaster of a Baptist school in Memphis with an enrollment of 3800 testified before Congress that six years of active recruitment had succeeded in enrolling only 46 black students in the summer program and two in the regular school program. In his opinion, black leaders contributed to his lack of success by discouraging parents from sending their children to Christian schools. Indeed, the head of the Memphis chapter of the NAACP testified at the IRS hearings, "No right thinking black Baptist minister would counsel his parishioners to participate in such a racial undertaking when, after two decades of constant struggle, a desegregated public school system is on the horizon."

Similar counter-pressures from within the black community are reported in a study of a rural Georgia county by the Center for Research and Social Change at Emory University. In this instance the county's one private school, under pressure from the IRS's proposed guidelines, sought to enroll minority students but met with a campaign of radio and newspaper ads urging black parents to keep their children in the public schools: "Don't be used up in the private schools" and "Don't be a backlash on your roots." The fact of the matter is, despite the recruitment efforts of some Christian schools, blacks see them as segregation academies, pure and simple. Black people I spoke with in North Carolina certainly felt this way. Black mistrust of these schools is sufficiently great that no amount of regulation by the IRS will persuade black parents to send their children there. Indeed, one gets the impression that nothing short of closing the Christian schools down will satisfy many black leaders.

Of course, the black parents not only distrust Christian schools, they are understandably reluctant to abandon the public schools after investing years of effort in them. And for blacks who have gained positions of leadership and responsibility in teaching and administration, public education is obviously where the action is. Moreover it is clear that black people tend to feel more comfortable with public rather than private programs. While private institutions are tainted with particularistic impulses frequently harmful to blacks, public institutions embody universalistic principles of free access and equal treatment. And while private programs frequently carry connotations of charity by a few individuals, public ones appeal to the black community because they represent a commitment by the entire society. As the one immigrant group that

did not arrive here willingly, blacks tend to feel that American society still owes them a debt; that reparations, as they were called in the 1960's, are still due. The commitment of significant public resources to free and equal education is just such a reparation.

### Invidious distinctions

As we have already noted, the guidelines originally proposed by the IRS refused to distinguish between religious and nonreligious schools. But even those sympathetic to the agency's approach quickly saw problems with this approach. As a *New Republic* article outspokenly entitled "Subsidizing Segregation" pointed out:

It's possible to imagine a situation where genuine religious schools could be trapped unfairly by the proposed IRS guidelines. . . . A Jewish or Amish school, for example, might have a hard time meeting the alternative tests for continued exemption, because of the rarity of Jewish or Amish blacks.

In response to such concerns the IRS proposed two exemptions from its racial quotas. The first applied to any school that was "part of a system of commonly supervised schools"—provided the entire system satisfied the guidelines. The other applied to schools with "special programs or special curricula which by their nature are of interest only to identifiable groups which are not composed of a significant number of minority students." What became evident during the Congressional hearings was that the first exemption was directed primarily at Catholic schools operating as part of a diocesan system and the second at Jewish day schools.

Unfortunately, this understandable effort to reconcile the logic of integration with the reality of exclusive religious groups creates more problems than it solves. The obvious question arises: Are Jewish day schools or Catholic parochial schools more "genuinely religious" than the Christian schools I have been describing? This is, of course, precisely the kind of invidious distinction between religious groups that the First Amendment is meant to obviate. And perhaps not surprisingly, ill feelings toward Catholics and Jews were at times evident among many who testified against the IRS proposals. For some the solution to this problem is to grant religious groups absolute freedom from all government regulation. I cannot adequately deal with this difficult issue here, but attention certainly can be drawn to the dangerous path taken by the IRS.

By now it must be evident that the forces involved in the Christian school movement are sufficiently complex that the issue of ra-

cial motives requires detailed investigation into the specifics of each case. Of course, this would normally be triggered by a complaint by, for example, parents who felt they had been discriminated against by a particular school. The ensuing litigation would then allow for judicial scrutiny of the policies of the school and of the motives of those involved with the school. It is precisely this careful, time-consuming examination of intent that the IRS seeks to avoid with its single-minded reliance on numerical quotas.

And in this regard it is important to note that the proposed guidelines represent a drastic and questionable departure from previous IRS policy. Since 1970 that policy has been to require private schools seeking tax exempt status to make various public declarations of nondiscriminatory admission policies. Curiously, the basis of that policy is a federal district court decision which the IRS now cites as the basis of its affirmative-action guidelines. In *Green v. Connolly*, a class of black parents successfully challenged the tax exemptions of several Mississippi private schools. But unlike the Christian schools we have been discussing, these were self-declared segregation academies. As a result the court enjoined the IRS from granting exempt status to any Mississippi schools that failed to declare publicly a "racially nondiscriminatory policy as to students." And as to what the court meant here, there can be no doubt. To monitor compliance with its decision the court required affected schools to submit relevant data to the IRS, including enrollment figures. But here the court explicitly avoided any hint of racial quotas and emphasized:

Our requirements do not establish substantive criteria but are information requirements, to assure that the Service will have salient information at hand before it makes a certification or gives an assurance of exemption or deductibility.

Similar questions arise with another case to which the IRS frequently refers as a basis for its affirmative-action proposals. In *Norwood v. Harrison* another federal district court ruled that private schools against which a prima facie case of discrimination had been established were ineligible to use textbooks purchased by the State of Mississippi. The court went on to specify that the absence of black students and teachers in a school was at least partial basis for such a prima facie case. Aside from the fact that the Christian schools discussed here receive no state subsidy such as textbooks, it is crucial to note that here again racial quotas were explicitly rejected:

At this point, it is important to emphasize that the ultimate issue in administering Mississippi's textbook program to private schools is not whether black students are actually enrolled at the school, but whether their absence is because the school has restrictively denied their access; simply, does the school have a racially discriminatory admissions policy?

### The nature of a tax exemption

Perhaps the most fundamental—and least examined—aspect of the IRS proposals is the assumption that tax exemption is a government subsidy that, like a federal grant to a university, triggers affirmative action requirements. IRS Commissioner Jerome Kurz cites Title VI of the Civil Rights Act of 1964 as requiring the proposed guidelines. It reads in part:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Without stopping to question here the disputable notion that this section requires the enforcement of racial quotas, we move on to ask whether tax exemption constitutes "federal financial assistance." The IRS clearly thinks so and cites *Norwood v. Harrison* to justify its proposals. But this case, which involves direct state aid in the form of textbooks to private schools in Mississippi, clearly has no bearing on Christian schools that refuse all state aid on religious grounds.

Nevertheless, the primary basis for the IRS's argument that tax exemption constitutes a government subsidy is the *Green v. Connally* decision in which the court, in addition to its other findings, concluded that tax exemption was unquestionably a form of governmental support to which schools practicing racial discrimination were not entitled. As the IRS emphasizes, this decision was later affirmed by the Supreme Court. At the same time the IRS neglects to mention that the Supreme Court has also explained that the *Green* decision, for technical reasons, lacks the weight of precedent and that as far as the Court is concerned it has not reviewed the question whether discriminatory private schools are entitled to tax-exempt status.

Beyond these legal arguments the proponents of the IRS's position stand on less technical grounds. Harvard Law Professor Stanley Surrey, for example, argues persuasively that tax exemptions

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represent a "cost" to the federal government in the form of foregone revenues. And since 1975 Congress has required the federal budget to include an accounting of such "tax expenditures." Nevertheless, this apparently common-sense accounting device raises some difficult issues. As Professor Richard Wagner has pointed out, the theory of tax expenditures assumes that everything not taxed by the government represents a government expenditure; or at least it does not offer a reasonable rule for what is and what is not to be considered an expenditure. For example, should husbands be taxed for the imputed value of their wives' services as homemakers? The tax expenditures notion seems to suggest this is feasible, and that government's failure to tax this represents an expenditure and, in effect, a subsidy to husbands.

Others argue that tax exemption represents a reimbursement to institutions providing services that the state would otherwise have to provide. This notion of a *quid pro quo* makes a good deal of sense in the case of charitable institutions such as hospitals, orphanages, and even private schools. But in the case of churches and religious schools this argument makes little sense. After all, these offer services that the state is constitutionally prohibited from providing or subsidizing! In addition, this argument would not apply to a range of philanthropic activities such as museums that the state might very well not feel the need to finance. In sum, the *quid pro quo* argument is only a partial justification for tax exemption.

Beyond these considerations, we must clarify some important differences between government subsidies and tax exemptions. Government grants, by their very nature, are rooted in the statutory process. Legislative bodies debate the merits and appropriate funding level of a particular grant; administrative agencies make the appropriations and are empowered to ensure that they are spent in accordance with legislative intent; and the grant is subject to periodic review which may expand, contract, or discontinue it. Upholding the constitutionality of property tax exemptions to churches, the Supreme Court states in its *Waltz v. Tax Commissioner* decision:

Obviously a direct money subsidy would be a relationship pregnant with involvement and, as with most governmental grant programs, could encompass sustained and detailed administrative standards, but that is not this case. The grant of a tax exemption is not sponsorship since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the state. No one has ever suggested that tax exemption has converted libraries,

art galleries, or hospitals into arms of the state or put employees on the public payroll.

With a subsidy, the initiative is always with the government. The system of tax exemption, on the other hand, puts the initiative elsewhere. By means of a grant the government can create or sustain an organization or program; it can do no such thing by means of a tax exemption, for the survival of the tax-exempt organization depends wholly upon the generosity and commitment of individual citizens. The amount of help such an entity receives is similarly dependent, not on state action, but on the decisions of citizens. Finally, no one is compelled to contribute to tax-exempt organizations, but a subsidy in effect forces contributions from all citizens.

Most important, the tax exemption system has deep roots in uniquely American notions of pluralism and individual initiative. This emerges most clearly when we consider the tax exemption of religious institutions. From the beginning, the American colonies exempted churches from local property and other taxes--in accord with well-established English custom. But in America, exemption was to take on a new and different meaning. To be sure, only a few colonies like Pennsylvania had anything like today's religious freedom. There were established churches, such as in Massachusetts Bay, from which dissenters, such as Roger Williams, had to flee. But even in these, the incredible diversity of the colonial peoples led to considerable accommodation and freedom. The emerging American solution to the religious turmoil of the sixteenth and seventeenth centuries was, in a word, tolerance.

The nineteenth century reinforced these tendencies, although the emphasis shifted somewhat from religious tolerance to the classical liberal concerns of limiting government and fostering private initiative. As President Eliot of Harvard made the case in 1864:

It has been often asserted, that to exempt an institution from taxation is the same thing as to grant it money directly from the public treasury. This statement is sophistical and fallacious. . . . The exemption method is emphatically an encouragement to public benefactions. On the contrary, the grant method extinguishes public spirit. No private person thinks of contributing to the support of an institution which has once got firmly saddled on the public treasury. The exemption method fosters the public virtues of self-respect and reliance; the grant method leads straight to an abject dependence upon the superior power--Government.

By the time Congress got around to enacting a federal income tax at the beginning of this century, the exemption habit was so

deeply ingrained it was simply taken for granted that religious and charitable institutions would be exempt. There was virtually no discussion of the matter, and the burden of proof is definitely upon those who argue that tax exemption is a subsidy, since there is no evidence Congress ever intended it as such.

The genius of tax exemption is as a mechanism by which government encourages individual initiative and freedom of association without fostering entanglements and dependencies. Yet these IRS proposals would use the same mechanism to extend, not limit, the reach of government. The assumption that tax exemption is a government subsidy obliterates the distinction between public and private basic to our political traditions. It would be a dangerous precedent, established by the IRS to accomplish what?

To eliminate what is still, in spite of recent growth, a small number of schools—the IRS Commissioner himself admits he does not know how many would be affected. To attack a culturally marginal phenomenon that subsists not on large financial contributions but on the zeal of a few fundamentalists whose extreme disaffection with the direction of American society is not likely to be widely imitated. To extend government control over institutions that are private in the fullest sense, refusing on religious grounds to accept a penny of state funds.

Certainly not all private schools established in recent years are free from suspicion as to their origins. Yet the schools I visited form part of a class of schools that has been grossly misunderstood. And beyond this, the IRS proposals raise the larger question: How far can government reach into realms long held inviolable? This is not to argue, as do the proponents of Christian schools, that as religious organizations they should be exempt from government scrutiny. After all, schools perform a function in which the public has a vital interest. But as the Supreme Court put it fifty years ago in *Pierce v. Society of Sisters*, “the child is not the mere creature of the state.” Nor, we might add, are institutions that exist solely through the free initiative and voluntary commitment of their members.



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# AFSCME

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The Honorable Bob Packwood  
 Subcommittee on Taxation and  
 Debt Management  
 Senate Finance Committee  
 Washington, D.C. 20510

Dear Senator:


On behalf of the more than one million members of the American Federation of State, County and Municipal Employees (AFSCME) I want to let you know of our strong opposition to S.550 the "Tuition Tax Relief Act of 1981."

Tuition tax credits have severe implications for both our nation's educational policy and budget policy. Public schools have united our country, they have enhanced the melting pot and transformed a diverse country of immigrants into a great nation. Tuition tax credits would create a caste system of education -- private schools for the elite and public schools for the working poor, the handicapped and the retarded. The Congressional Budget Office has given you its cost estimates -- reduction in federal revenues in 1986 of \$6.9 billion. In addition, CBO has stated that "approximately 60% of the benefits would go to students from families with incomes above the median family income."

AFSCME believes that passage of S.550 would signal to state and local governments a lack of commitment at the federal level to the critical role of public education.

We would appreciate you inserting our letter as part of the hearing record.

Sincerely,



JOSHUA BERMAN  
 Director of Political and  
 Legislative Affairs

JB/lms

cc: Senator Daniel Moynihan

**in the public service**

**The National  
PTA**

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*Governmental Relations*

TESTIMONY OF THE

THE NATIONAL CONGRESS OF PARENTS AND TEACHERS

IN REGARD TO TUITION TAX CREDITS

FILED BEFORE THE

SENATE FINANCE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

U. S. SENATE

JUNE 3-4, 1981

(Submitted for the Official Record)

**The National  
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*Governmental Relations*

Mr. Chairman and members of the subcommittee, I am Manya Ungar, Vice-President for Legislative Activities of the National Parents and Teachers Association. The National PTA has a membership of over 6 million members in 29,000 state and local units throughout the United States and Europe.

I thank you for this opportunity to speak out against Tuition Tax Credit legislation which the National PTA believes does a tremendous disservice to children and to public education. As you recall, the current debate related to tuition tax credits, goes back to September 15, 1977 when the Packwood-Moynihan bill (S 2147) was introduced in the Senate. The plan was seductively simple. It was to give Federal dollars to families that send their children to private or parochial schools. After all, Senator Moynihan argues, these families are paying federal, state and local taxes for services they don't receive.

The National PTA immediately recognized that the Packwood-Moynihan bill was a threat to public education and helped organize the National Coalition to Save Public Education--a broad based Coalition of more than 40 organizations interested in combating tuition tax credits. Through this collective effort, the National PTA and the National Coalition for Public Education won a stunning victory and defeated tuition tax credits.

But this victory was only the beginning--already in the 97th Congress, a total of 20 tuition tax credit bills have been introduced. The bills vary in amounts of the credit, refundability, eligibility, and levels of coverage. However, they all propose to do the same thing--to raid the public treasury (partially at the expense of public schools) for purposes that are private and non-public in nature. The long range socio-economic impact of such a plan would be calamitous indeed and would threaten the fundamental premises upon which American public education is based. Tuition Tax Credits are no less troublesome than they were in 1977. What is new is that the President of the United States and the Secretary of Education are now enthusiastic supporters of tuition tax credits while proposing federal education budget cuts for public schools that will exceed 25%.

In the name of austerity and sacrifice, the Office of Management and Budget is proposing severe cuts in Federal programs that benefit the needy, yet is strongly indifferent to the high cost of tuition tax credits--approximately \$5 billion yearly that would benefit a small percentage of more affluent families who send their children to private schools. The President wishes to balance the budget, reduce the tax burden, diminish governmental involvement with private institutions, and yet encourages an expensive spending and entitlement program such as tuition tax credits. There could hardly be a more glaring inconsistency.

Clearly, tuition tax credits constitute a change in fiscal and tax policy that is not in the public interest for the following reasons:

1. Tax credits entail a potential multi-billion dollar federal revenue loss and are uncontrollable expenditures that our nation cannot afford.
2. Tax credits would remove items from the spending side of the budget, thereby hiding them from public scrutiny.
3. Tax credits would undermine the financial base of our nation's traditional system of tuition-free universal public education. Public schools are currently under-financed due to state tax cuts and scarce local resources. Tax credits would further add to this burden by taking money from existing federal education programs and increasing the wealth of private schools.
4. Further, any reduction in enrollment caused by upper and middle class students leaving the public schools would result in additional loss of revenues from state sources as such support is based on the number of students actually attending the local public schools.
5. Private school students already receive approximately \$70 per student from the federal government. If an additional tax credit up to \$500 were given to families of private school students, each private school child would receive 4 1/2 times the amount each public school child receives per year.
6. According to the Congressional Budget Office, tax credits will benefit more affluent parents because they are more likely to send their children to higher-cost schools and colleges.
7. Tax credits will become simply an indirect form of institutional aid. Using the tax payers as a conduit, schools could increase their charges to capture a portion or all of the benefits.

Severe adverse impact on the federal budget and tax policy is only one reason the National PTA opposes tuition tax credits. The fiscal costs of the bill are minor compared with the social and educational policy implications. If the Government is to directly or indirectly support non-public schools, the very reasons for which we have publicly funded schooling must be brought to bear. We assume that our system of universal free public education has been funded at least in part by our belief that education generates social or public benefits. We believe that the public interest is served by transforming our youngsters into adults with common values and skills. Public control and funding of schools have grown from this basic premise.

Public schools have reflected public needs and public policies through a system of laws, judicial procedures and administrative rules and regulations at the local, state and national levels. The genius of American public education is in its diversity--meeting the needs of the disadvantaged, handicapped, talented and gifted, non-english speaking students and other special students populations in 16,000 school districts throughout the United States. The access of educational opportunity is no greater in any other country in the world, and proponents of tuition tax credits say they need choices.

What they really mean is they would like a private option paid for by public dollars. Tuition tax credits would encourage a general assistance program subsidizing private

and parochial schools that are not conceived publicly, do not have to adhere equally to federal, state, and local program mandates, do not have totally open admissions standards and are not officially accountable publicly to anyone for the use of public dollars.

The special treatment tuition tax credit proponents seek for private and parochial schools is reinforced by several provisions in the Moynihan-Packwood-Roth bill (S. 550).

1. While the bill provides for no exclusion of persons "from admission to such schools, or participating in schools on account of race, color, or national or ethnic origin," it does not mention religion, political beliefs, or ability to pay. Private schools are allowed to make those decisions privately, yet would be eligible for public dollars.
2. "The bill does not grant authority to examine books or accounts, or the activities, of any school which is operated, supervised or controlled by or in connection with a church or convention or association of churches." This provision neatly and simply eliminates the possibility of public scrutiny of programs, audits, and evaluation. It is plain bad business to spend public funds without opportunity for visual accountability.
3. "The tax credit is not to be considered as federal assistance to an institution." The distinction between a parent being a recipient and the institution being a recipient of public dollars is artificial. Since eligibility for credits is based on attendance at private/parochial schools, and since tuition tax credits are indirect benefits, the National PTA finds this distinction unimpressive. Also, this provision would clearly remove private schools from the purview of federal civil rights standards.



The demand that a small minority be financially rewarded for not using free, public education in addition to receiving exemptions from prevailing educational and social policy has no legitimate place in public thinking. Tuition tax credits would have the following policy implications:

1. Tuition tax credits are regressive since children from the wealthier families tend to be over-represented. Private school attendance rates for students from families with incomes of \$25,000 or more are about 5 times higher than the rates among children from families with incomes of less than \$5,000. Thus, children from less affluent families would be excluded based on ability to pay.
2. Given the traditional federal commitment to assure equal educational opportunities for minority and low income children, these children would claim only small shares of the credits.
3. Tuition tax credits would work to create a caste system of education where many of the advantaged students would end up in private schools, and the rest of the nation's students, including those of middle and lower economic class families and those who need special education programs considered too costly by most private schools would be left to attend underfinanced public schools.
4. Ever increasing tuition tax credits obviously could lead to a vast multiplication of "private schools" serving a wide range of special interests, some wholesome and some not. The combination of private schools and public money would stimulate abandonment of the public schools by families with means and initiative to send children to private schools.
5. The question of free choice is illusory. Under tuition tax credits, it is not the parent or the student who has the right to choose. Rather, it is the school that has the right to select and reject the students it wants. Moreover, many social analysts believe that the widespread revival of sectarian schools, coupled with the growth of "segregation academies" would worsen American society's polarization along religious, racial and ethnic lines.

Lastly, it is incenceivable that the federal government could sustain a multi-billion dollar tax credit without some mechanism for ensuring that both the school and tuition charge are legitimate. But how does the federal government determine the legitimacy of a private school? By federal regulation? By requiring state regulation?

Further, in terms of educational quality, if federally subsidized private schools do not succeed, can the federal level argue parent employer or will elected officials be pressured to scrutinize and ultimately regulate the private schools? In terms of protecting the federal treasury and the consuming public, how long could Congress promote private education without any accountability yet find that public education, even when rigid state guidelines require the strictest accountability for the expenditure of their federal-ly connected revenues?

While the National PTA supports private schools as an alternative for some people, it also supports public funds for public schools only. The duty of the government to private schools is to leave them alone.

Lastly, it is certain that should the principle of tuition tax credits ever be adopted, it will ensure that a fight takes place every year over how much more money to give the non-public schools this time around; and not only in Washington, but also in every state legislature and every local school

district as well. . Even the lowest maximum tax credit figure of \$100.00--no matter how trivial it may appear--would just be the beginning of an escalating battle over public monies.

Mr. Chairman and committee members, the National PTA once again reaffirms its confidence in the public schools and the importance of popular education. Even with its limitations, the premise of public school education is well founded and based on a record of success and achievement. Should tuition tax credits pass, free quality education would be a thing of the past. Thank you for this opportunity to voice the views of the National PTA.

1981 JUN 10 11:11 AM  
**NATIONAL ASSOCIATION OF SOCIAL WORKERS, INC.**

1425 H St., N.W., Suite 600, Washington, D.C. 20005 (202) 628-6800



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Senator Packwood  
 Chair, Subcommittee on Taxation  
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 Room 2227 Dirksen Senate Office Bldg.  
 Washington, D.C. 20510

RE: WRITTEN STATEMENT SUBMITTED FOR HEARING ON  
 TUITION TAX CREDITS, June 3-4, 1981

Dear Senator Packwood:

On behalf of the 85,000 professional members of the National Association of Social Workers, I am writing to express our organization's opposition to tuition tax credits proposals.

The public education system in this country represents our one universal service provided, by right, to every American child. While we support the right of any family to choose private education, we oppose public policy that would actively support that choice. As education faces funding cuts and declining student populations, public policy should work toward encouraging families to remain part of and participate in strengthening public schools.

The exact impact of elementary and secondary tax credits on the schools is uncertain. Congressional Budget Office estimates that tuition tax credits will cost at least \$4.7 billion a year--lost revenue that equals more than one-third of all the money spent by the Department of Education last year on education support programs.

Meanwhile the Federal government spends only \$160 annually per public school child, while the tax credit would give up to \$500 of support to each private school student. It is clearly inequitable to spend more than three times as much to support each private school student.

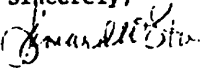
It is highly probable that tuition tax credits will be declared unconstitutional by the Supreme Court. While legal experts disagree on this matter, it is clear that

Senator Packwood  
Page 2  
June 5, 1981

enormous time and money will go into prolonged arguments in the Courts. A tuition-free, universal public education system has long been a hallmark of American society. That system needs to be bolstered now. Tuition tax credits will only drain away potential support, both in terms of dollars and public commitment.

For more than 70 years, social workers have been a part of the public school system. We have worked to establish stronger home/school/community relationships, and to help children make maximum use of their educational opportunities. We value the contribution of the public school system to American society.

Sincerely,



Leonard W. Stern, ACSW  
Associate Executive Director

LWS:MF:db

