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Nos. 81-1 and 81-3

Office-Supreme Court, U.S.  
F I L E D

FEB 9 1982

ALEXANDER L. STEVAS,  
CLERK

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**In the Supreme Court of the United States**

OCTOBER TERM, 1981

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GOLDSBORO CHRISTIAN SCHOOLS, INC., PETITIONER

*v.*

UNITED STATES OF AMERICA

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BOB JONES UNIVERSITY, PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON WRITS OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FOURTH CIRCUIT*

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**SUPPLEMENTAL MEMORANDUM  
FOR THE UNITED STATES**

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LAWRENCE G. WALLACE  
*Acting Solicitor General  
Department of Justice  
Washington, D.C. 20530  
(202) 633-2217*

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**BEST AVAILABLE COPY**

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*ON WRITS OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FOURTH CIRCUIT*

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**SUPPLEMENTAL MEMORANDUM  
FOR THE UNITED STATES**

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We wish to inform the Court that on January 25, 1982, the government filed a response to the Plaintiffs' Motion to Vacate Stay of Proceedings, etc., in

the related litigation styled *Green v. Regan*, Civ. Action No. 1355-69 (D.D.C.).

For the convenience of the Court, we have reprinted that response in the Appendix, *infra*. Attached to that response is a copy of proposed legislation submitted by the President on January 18, 1982, which would give the Secretary of the Treasury and the Internal Revenue Service express authority to deny tax-exempt status to private non-profit educational organizations with racially discriminatory policies. Copies of the statement by the White House press secretary, the proposed bill, the text of President Reagan's letter to the President of the Senate and the Speaker of the House, the Press Release of the Department of the Treasury dated January 18, 1982, and an affidavit of the Assistant Commissioner of the Internal Revenue for Employee Plans and Exempt Organizations, were attached to the government's response in *Green* and are likewise reproduced for the information of the Court. We are advised that both the House Ways and Means Committee and the Senate Finance Committee have scheduled hearings on the President's proposal in early February, 1982.

Respectfully submitted.

LAWRENCE G. WALLACE  
*Acting Solicitor General \**

FEBRUARY 1982

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\* The Solicitor General is disqualified in these cases.

APPENDIX

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1355-69

WILLIAM H. GREEN, ET AL., PLAINTIFFS

v.

DONALD T. REGAN, ET AL., DEFENDANTS

DEFENDANTS' RESPONSE TO PLAINTIFFS'  
MOTION TO VACATE STAY OF PROCEED-  
INGS, TO SHORTEN TIME FOR RESPONSE  
HERETO, AND FOR FURTHER INJUNCTIVE  
RELIEF TO ENFORCE DECLARATORY JUDG-  
MENT AND PRESERVE THE STATUS QUO

Defendants submit that this Court's Order of January 6, 1982, staying all proceedings herein should be continued in effect until the United States Supreme Court enters its decisions in the consolidated cases of *Bob Jones University v. United States* (No. 81-3) and *Goldsboro Christian Schools, Inc. v. United States* (No. 81-1). Until the final status of these two Supreme Court actions becomes clear, defendants believe it would be premature to vacate the January 6, 1982 stay order in this case.<sup>1</sup>

A significant development since the filing of plaintiffs' motion is that on January 18, 1982 the President submitted proposed legislation to Congress to amend Code Section 501 to state expressly that effective after July 9, 1970, tax-exempt status may not

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<sup>1</sup> Defendants' counsel was advised today, January 25, 1982, by the Clerk's Office of the United States Supreme Court that no final action has been taken in the *Bob Jones* and *Goldsboro* cases, and that the Supreme Court will be in recess until February 22, 1982.

be accorded to private, non-profit educational organizations with racially discriminatory policies. At the same time the legislation was proposed, the Treasury Department announced that the Internal Revenue Service has been instructed "not to act on any applications for tax exemptions filed in response to the Internal Revenue Service's policy announced on Friday, January 8, 1982, until Congress has acted on the proposed legislation (except as required by the memorandum in support of the motion to vacate as filed in the Supreme Court on January 8, 1982)."<sup>2</sup>

With respect to the subject matter of the instant case, as set forth in the Affidavit of S. Allen Winborne (Assistant Commissioner Employee Plans and Exempt Organizations), attached as Exhibit B, defendants have continued to comply with the outstanding injunction orders of this Court. Defendants have not taken any action to restore tax-exempt status to private schools in Mississippi which had their existing tax exemptions revoked or their applications for tax exemptions denied because of the injunction orders in this case.

Insofar as the revenue rulings and revenue procedures referred to in plaintiffs' motion are concerned, defendants believe that plaintiffs are erroneous in broadly interpreting the prior decisions in this case as limiting or prohibiting future administrative actions by defendants that affect private schools outside the State of Mississippi. These plaintiffs clearly

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<sup>2</sup> A copy of this proposed legislation and the related Treasury Department News Releases are attached as Exhibit A. The exception noted in the parenthesis portion of the above quotation from the January 18 Treasury Press Release concerns the petitioners in the two Supreme Court cases, neither of which operate a school in Mississippi covered by the outstanding orders in this case.

lack standing to complain about IRS administrative actions which have not resulted in defendants acting inconsistent with the extant injunction orders in this case. Nowhere in the outstanding declaratory judgment or injunction orders is there any directive concerning the adoption, modification or revocation of specific, national IRS revenue rulings or revenue procedures. Accordingly, since as indicated in the Winborne Affidavit, the defendants have continued to comply with the injunction orders of this Court with respect to Mississippi private schools, it is submitted there is no standing or other jurisdictional basis for plaintiffs' claim to the further injunctive relief requested in paragraph d of their motion as to the referenced IRS administrative rulings.

Moreover, as the pleadings and prior decisions in this case make clear, the purpose of this suit was and is to prohibit defendants "from according tax-exempt status and deductibility of contributions to private schools in Mississippi discriminating against Negro students." *Green v. Connally*, 330 F. Supp. 1140, 1151 [*sic*] (D. D.C. 1971), *aff'd sub nom.*, *Coit v. Green*, 404 U.S. 997 (1971). It is also apparent that the scope of the injunction orders entered in 1971, as modified in 1980, pertain solely to "Mississippi private schools or the organizations that operate them." <sup>3</sup> The inappropriateness of plaintiffs' current request for injunctive relief affecting IRS administrative policy with respect to private schools outside of Mississippi is clearly illustrated by the fact that counsel for plaintiffs brought a separate nationwide class action in order to accomplish relief of the type plaintiffs now claim there is a basis for granting in

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<sup>3</sup> See this Court's Order and Permanent Injunction of May 5, 1980 at page 2.

the *Green* case. See *Wright v. Miller*, 480 F. Supp. 790 (D. D.C. 1979), rev'd 656 F. 2d 820 (D.C. Cir. 1981), petition for certiorari filed November 23, 1981 *Regan v. Wright* (S. Ct. 81-970). In effect, the bringing of the *Wright* action shows a recognition that the scope of this suit properly should be limited to IRS actions affecting tax-exempt status of private schools in the State of Mississippi, and as stated above, defendants have complied with the outstanding injunction orders entered in this case. Accordingly, defendants submit there is no jurisdictional basis in this suit for granting the broader injunctive relief plaintiffs now request.

Finally, defendants note that since every effort will be made by defendants to obtain prompt consideration of the recent legislation proposed to Congress, and since Congress presumably will have an opportunity to consider the complex issues now pending before this Court, this legislative development presents an additional basis for continuing the stay order now in effect.

### CONCLUSION

For the foregoing reasons, defendants respectfully submit that plaintiffs' motion to vacate this Court's Order of January 6, 1982 should be denied.

Dated: January 25, 1982

Respectfully submitted,

/s/ Glenn L. Archer, Jr.  
GLENN L. ARCHER, JR.  
Assistant Attorney General  
Tax Division  
U. S. Department of Justice

/s/ John F. Murray  
JOHN F. MURRAY  
Deputy Assistant Attorney General  
Tax Division  
U. S. Department of Justice

/s/ Donald J. Gavin  
EDWARD J. SNYDER  
DONALD J. GAVIN  
MICHAEL J. KEARNS  
Attorneys, Tax Division  
U. S. Department of Justice  
Washington, D.C. 20530  
Telephone: (202) 724-6346

Of Counsel:

CHARLES F. C. RUFF  
United States Attorney for  
the District of Columbia



## THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

January 18, 1982

## FACT SHEET

*Tax Exemption Bill Summary*

The proposed legislation being submitted by the President to the Congress will, for the first time, give the Secretary of the Treasury and the Internal Revenue Service express authority to deny tax-exempt status to private, non-profit educational organizations with racially discriminatory policies. The legislation recognizes and is sensitive to the legitimate special needs of private religious schools.

Section 1 of the bill adds to section 501 of the Internal Revenue Code a new subsection that expressly prohibits granting tax exemptions to private schools with racially discriminatory policies, notwithstanding that such schools otherwise meet the tests for exemption presently listed in section 501(c)(3).

Religious schools of all faiths are permitted to limit, or give preferences and priorities, to members of a particular religious organization or belief in their admissions policies or religious training and worship programs. However, the bill expressly provides that a tax exemption will not be granted if any such policy, program, preference or priority is based upon race or a belief that requires discrimination on the basis of race.

Section 2 of the bill amends several sections of the Internal Revenue Code dealing with deductions to provide, consistent with the exemption provisions of the new law, that no deductions will be allowed for contributions to a school with a racially discriminatory policy.

## A BILL

To amend the Internal Revenue Code of 1954 to prohibit the granting of tax-exempt status to organizations maintaining schools with racially discriminatory policies.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. DENIAL OF TAX EXEMPTIONS TO ORGANIZATIONS MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES.

Section 501 of the Internal Revenue Code of 1954 (relating to exemption from tax) is amended by redesignating subsection (j) as subsection (k) and inserting a new subsection (j) reading as follows:

“(j) ORGANIZATIONS MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES.—

“(1) IN GENERAL.—An organization that normally maintains a regular faculty and curriculum (other than an exclusively religious curriculum) and normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on shall not be deemed to be described in subsection (c) (3), and shall not be exempt from tax under subsection (a), if such organization has a racially discriminatory policy.

“(2) DEFINITIONS.—For the purposes of this subsection—

“(i) An organization has a ‘racially discriminatory policy’ if it refuses to admit students of all races to the rights, privileges, programs, and

activities generally accorded or made available to students by that organization, or if the organization refuses to administer its educational policies, admissions policies, scholarship and loan programs, athletic programs, or other programs administered by such organization in a manner that does not discriminate on the basis of race. The term 'racially discriminatory policy' does not include an admissions policy of a school, or a program of religious training or workshop of a school, that is limited, or grants preferences or priorities, to members of a particular religious organization or belief, *provided*, that no such policy, program, preference, or priority is based upon race or upon a belief that requires discrimination on the basis of race.

"(ii) The term 'race' shall include color or national origin."

SEC. 2. DENIAL OF DEDUCTIONS FOR CONTRIBUTIONS TO ORGANIZATIONS MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES.

(a) Section 170 of the Internal Revenue Code of 1954 (relating to allowance of deductions for certain charitable, etc., contributions and gifts) is amended by adding at the end of subsection (f) a new paragraph (7) reading as follows:

"(7) DENIAL OF DEDUCTIONS FOR CONTRIBUTIONS TO ORGANIZATIONS MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES.—No deduction shall be allowed under this section for any contribution to or for the use of an organization described in section 501(j)(1) that has a racially discriminatory policy as defined in section 501(j)(2)."

(b) Section 642 of such Code (relating to special rules for credits and deductions) is amended by adding at the end of subsection (c) a new paragraph (7) reading as follows:

“(7) DENIAL OF DEDUCTIONS FOR CONTRIBUTIONS TO ORGANIZATIONS MAINTAINING SCHOOLS WITH RACIALLY DISCRIMINATORY POLICIES.—No deduction shall be allowed under this section for any contribution to or for the use of an organization described in section 501(j)(1) that has a racially discriminatory policy as defined in section 501(j)(2).”

(c) Section 2055 of such Code (relating to the allowance of estate tax deductions for transfers for public, charitable, and religious uses) is amended by adding at the end of subsection (e) a new paragraph (4) reading as follows:

“(4) No deduction shall be allowed under this section for any transfer to or for the use of an organization described in section 501(j)(1) that has a racially discriminatory policy as defined in section 501(j)(2).”

(d) Section 2522 of such Code (relating to charitable and similar gifts) is amended by adding at the end of subsection (c) a new paragraph (3) reading as follows:

“(3) No deduction shall be allowed under this section for any gift to or for the use or an organization described in section 501(j)(1) that has a racially discriminatory policy as defined in section 501(j)(2).”

#### SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall apply after July 9, 1970.

## THE WHITE HOUSE

Office of the Secretary

For Immediate Release

January 18, 1982

TEXT OF LETTER SENT TO  
THE PRESIDENT OF THE SENATE AND  
THE SPEAKER OF THE HOUSE

Dear Mr. President/Mr. Speaker:

As you are aware, the Department of the Treasury announced on January 8 that the Internal Revenue Service would no longer deny tax-exempt status to private, non-profit educational organizations that engage in racially discriminatory practices but otherwise qualify for such status under the present Internal Revenue Code. That decision reflects my belief that agencies such as the IRS should not be permitted, even with the best of intentions and to further goals that I strongly endorse, to govern by administrative fiat by exercising powers that the Constitution assigns to the Congress.

I share with you and your colleagues an unalterable opposition to racial discrimination in any form. Such practices are repugnant to all that our Nation and its citizens hold dear, and I believe this repugnance should be plainly reflected in our laws. To that end, I am herewith submitting to the Congress proposed legislation that would prohibit tax exemptions for any schools that discriminate on the basis of race. This proposed legislation is sensitive to the legitimate special needs of private religious schools.

I pledge my fullest cooperation in working with you to enact such legislation as rapidly as possible, and

urge that you give this matter the very highest priority.

I have been advised by the Secretary of the Treasury that he will not act on any applications for tax exemptions filed in response to the IRS policy announced on January 8, until the Congress has acted on this proposed legislation.

I believe the course I have outlined is the one most consistent both with our mutual determination to eradicate all vestiges of racial discrimination in American society, and with a proper view of the powers vested in the Congress under our constitutional system.

I feel this legislative action is important to and desired by all citizens of this great Nation; I am confident that you will give the issue the prompt attention it deserves.

Sincerely,

/s/ Ronald Reagan  
RONALD REAGAN

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## TREASURY NEWS

Department of the Treasury  
Washington, D.C.  
Telephone: 566-2041

FOR IMMEDIATE RELEASE  
Monday, January 18, 1982

Contract: Marlin Fitzwater  
(202) 566-5252

### TREASURY—IRS TO HOLD ACTION ON TAX EXEMPTIONS

Recognizing the President's desire to have legislation introduced to prohibit the granting of tax exemptions to certain educational institutions that engage in racially discriminatory practices, the Secretary of Treasury has instructed the Commissioner of Internal Revenue not to act on any applications for tax exemptions filed in response to the Internal Revenue Service's policy announced on Friday, January 8, 1982, until Congress has acted on the proposed legislation (except as required by the memorandum in support of the motion to vacate as filed in the Supreme Court on January 8, 1982).

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1355-69

WILLIAM H. GREEN, ET AL., PLAINTIFFS

v.

DONALD T. REGAN, ET AL., DEFENDANTS

AFFIDAVIT

CITY OF WASHINGTON )  
) ) ss  
DISTRICT OF COLUMBIA)

S. ALLEN WINBORNE, being first duly sworn, deposes and says upon information and belief:

1. I am the Assistant Commissioner (Employee Plans and Exempt Organizations) and I am familiar with the steps taken by the Internal Revenue Service to implement the Orders of this Court dated May 5 and June 2, 1980.

2. This affidavit is being submitted in connection with plaintiffs' Motion to Vacate Stay of Proceedings to Shorten Time for Response Hereto, and for Further Injunctive Relief to Enforce Declaratory Judgment and to Preserve *Status Quo* filed with the Court on January 13, 1982.

3. As set forth in detail in the affidavits I have previously filed in this case, the Internal Revenue Service has complied with the revised injunctive orders entered by this Court. The Internal Revenue Service is taking no actions to restore the tax exempt status of any organization operating a private school



in Mississippi which had exempt status revoked as a result of failure to comply with the criteria of the orders entered in this case. Any requests for recognition of exempt status made by organizations operating a private school in Mississippi are being considered in accordance with the criteria of the orders entered in this case.

/s/ S. Allen Winborne  
S. ALLEN WINBORNE

Subscribed and Sworn to before me this 21st day of January, 1982.

Judith O. Hinson  
Notary Public

My commission expires January 31, 1986.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing Defendants' Response to Plaintiffs' Motion to Vacate Stay of Proceedings, to Shorten Time for Response Hereto, and for Further Injunctive Relief to Enforce Declaratory Judgment and Preserve the *Status Quo* has been made this 25th day of January, 1982, by mailing a copy thereof to counsel for intervenors at the following addresses:

William Bentley Ball, Esquire  
Philip J. Murren, Esquire  
Ball & Skelly  
511 North Second Street  
P.O. Box 1108  
Harrisburg, Pennsylvania 17108

Charles J. Steele, Esquire  
James Edward Ablard, Esquire  
Whiteford, Hart, Carmody & Wilson  
1828 L Street, N.W.  
Washington, D.C. 20036

By mailing a copy thereof to counsel for the plaintiffs at the following address:

William L. Robinson, Esquire  
Norman J. Chachkin, Esquire  
Frank P. Parker, Esquire  
Lawyer's Committee for Civil  
Rights Under Law  
733 15th Street, N.W.  
Suite 520  
Washington, D.C. 20005

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And by mailing a copy thereof to the other counsel  
of record at the following address:

George S. Leonard, Esquire  
206 N. Washington Street  
Room 328  
Alexandria, Virginia 22313

/s/ Donald J. Gavin  
DONALD J. GAVIN

