Nos. 81-1 and 81-3

In the Supreme Court of the United States

OCTOBER TERM, 1980

GOLDSBORO CHRISTIAN SCHOOLS, INC., PETITIONER

v.

UNITED STATES OF AMERICA

BOB JONES UNIVERSITY, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether petitioners, nonprofit corporations operating private schools that, on the basis of religious doctrine, maintain racially discriminatory admissions policies and other racially discriminatory practices qualify as tax-exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1954.

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OPINIONS BELOW

No. 81-1. The order of the district court (Pet. App. 5a-18a) is reported at 436 F. Supp. 1314. The opinion of the court of appeals (Pet. App. 1a-3a) is not reported.

No. 81-3. The opinion and order of the district court (Pet. App. A38-A71) are reported at 468 F. Supp. 890. The opinion of the court of appeals (Pet. App. A1-A37) is reported at 639 F.2d 147.

JURISDICTION

No. 81-1. The judgment of the court of appeals (Pet. App. 53a) was entered on February 24, 1981, and the court of appeals denied a timely petition for rehearing and suggestion for rehearing en banc on April 7, 1981 (Pet. App. 55a). The petition for a writ of certiorari was filed on July 2, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

No. 81-3. The judgment of the court of appeals was entered on December 30, 1980 (Pet. App. A1). The order denying a petition for rehearing was entered on April 8, 1981 (Pet. App. A100-A101). The petition for a writ of certiorari was filed on July 1, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES AND REGULATIONS INVOLVED

The relevant provisions of Sections 501(a), 501(c)(3), and 3306(c)(8) of the Internal Revenue Code of 1954 (26 U.S.C.) are set forth at Pet. 3 (No. 81-3). The relevant provisions of Section 170(a) and (c)(2) of the Internal Revenue Code of 1954 (26 U.S.C.) and of Section 1.501(c)(3)-1(d) of the Treasury Regulations on Income Tax (26 C.F.R.) are set forth at Appendix, *infra*, 1a-3a.

STATEMENT

Although the petition in *Goldsboro Christian Schools, Inc.* was docketed first in this Court, we begin with the statement of facts in *Bob Jones University* because, on the question presented here, the

court of appeals rendered its principal opinion in that case and decided *Goldsboro Christian Schools* on the authority of *Bob Jones University*.

A. Bob Jones University—No. 81-3

1. Petitioner is a nonprofit organization incorporated in 1952 under the laws of South Carolina. As set forth in its certificate of incorporation, its purpose is " 'to conduct an institution of learning for the general education of youth in the essentials of culture and in the arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy Scriptures * * *' " (Pet. App. A2-A3, A40-A41). Petitioner provides instruction for students from kindergarten through college and graduate school (Pet. App. A3, A41; A. 68-69, 136, 200).[1] At the college level, it operates a school of education, a school of fine arts, a school of religion, a college of arts and sciences, and a school of business (A. 69). In its graduate schools, it offers courses in art, music, speech, radio and television, cinema, religion, and education (A. 200). It enrolls about 5,000 students and offers approximately 50 accredited degrees.[2] It

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[1] "A." refers to the separately bound record appendix filed in the court of appeals.

[2] Until 1972, the Veterans Administration recognized petitioner as an educational institution offering courses of study suitable for the education of veterans who were recipients of subsidies under the educational benefits program administered by the Veterans Administration. See *Bob Jones University* v. *Johnson*, 396 F. Supp. 597, 600-601 (D.S.C. 1974), aff'd without published opinion, 529 F.2d 514 (4th Cir. 1975). During this period, petitioner's courses of study were certified to be suitable for the education of veterans by the South Carolina State Board of Education, using criteria prescribed by federal statute. *Ibid.* See 38 U.S.C. 1771 *et seq.* In November

also offers a nondegree, noncredit program entitled Institute of Christian Service. The purpose of that program is to teach the principles of the Bible and to train Christian character (Pet. App. A3, A41). All courses are taught in accordance with the dictates of Biblical Scripture. Teachers are required to be "born again" Christians. Students are screened as to their religious beliefs and their conduct is strictly regulated (Pet. App. A3-A4).

From its inception, petitioner has, based upon religious doctrine, maintained a racially restrictive admissions policy and a policy forbidding interracial dating and interracial marriage. Prior to 1971, petitioner excluded blacks entirely from enrollment. From 1971 until 1975, married black persons and members of other minority races or ethnic groups were not excluded from enrollment, but petitioner continued to deny admission to unmarried blacks unless the applicant had been a staff member of petitioner for at least four years (Pet. App. A4, A43). See *Bob Jones University* v. *Johnson*, 396 F. Supp. 597, 600 & n.9 (D.S.C. 1974), aff'd without published opinion, 529 F.2d 514 (4th Cir. 1975). During this latter period, petitioner's doctrinal policy did not specifically require the exclusion of blacks,

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1972, the Veterans Administration terminated the right of otherwise eligible veterans to receive veterans' benefits for education at Bob Jones University based upon a determination by the Veterans Administration that petitioner had failed to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and with the Veterans Administration regulations implementing the statutory requirement of nondiscrimination in federally assisted programs. See *Bob Jones University* v. *Johnson*, *supra*, 396 F. Supp. at 598-599. Upon petitioner's complaint for review, the district court and the court of appeals sustained the administrative order of termination. *Bob Jones University* v. *Johnson*, *supra*.

but denying admission to unmarried blacks was, in petitioner's judgment, the best means of implementing its prohibition against interracial dating and marriage (Pet. App. A43).

Following the court of appeals' decisions in April and May 1975, in *Bob Jones University* v. *Johnson*, 529 F.2d 514 (4th Cir. 1975), and in *McCrary* v. *Runyon*, 515 F.2d 1082 (4th Cir. 1975), aff'd, 427 U.S. 160 (1976), petitioner once again revised its admissions policy. After May 29, 1975, petitioner generally permitted unmarried blacks as well as married blacks to enroll as students. It continued to deny admission, however, to any applicant known to be a partner in an interracial marriage (Pet. App. A4, A43-A44). It also established disciplinary rules requiring the expulsion of any student (1) who was a partner in an interracial marriage, (2) who was affiliated with a group or organization advocating interracial marriage, (3) who engaged in interracial dating, or (4) who encouraged others to violate petitioner's rules and prohibitions against interracial dating (Pet. App. A4, A44).

Until 1970, the Internal Revenue Service recognized petitioner as a tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.). See *Bob Jones University* v. *Simon*, 416 U.S. 725, 735 (1974). By letter dated November 30, 1970, the Internal Revenue Service advised petitioner that thereafter it would not recognize as exempt, or allow deductibility of contributions to, any private school maintaining a racially discriminatory admissions policy (Pet. App. A39, A87). Petitioner responded that it did not admit black students and that it had no intention of altering that policy. The Internal Revenue Service therefore commenced administrative proceedings leading

to the revocation of petitioner's exemption.[3] See *Bob Jones University* v. *Simon, supra,* 416 U.S. at 735. In January 1976, the Service issued a final notice of revocation to petitioner, effective as of December 1, 1970 (Pet. App. A40, A87-A88, A89).

2. Seeking to reinstate its exemption, petitioner brought this action in the United States District Court for the District of South Carolina for refund of $21 in federal unemployment taxes for the year 1975 (Pet. App. A3, A40).[4] The government counterclaimed for approximately $490,000 in federal unemployment taxes for the years 1971 through 1975 (*ibid.*). Following a trial, the district court held that petitioner qualified for tax exemption under Section 501(c)(3) of the Code as an institution organized and operated exclusively for religious and educational purposes (Pet. App. A45, A71), and that petitioner was not required to demonstrate a nondiscriminatory policy in order so to qualify (Pet. App. A45-A71).

The court of appeals reversed (Pet. App. A1-A17), with one judge dissenting (Pet. App. A18-A37). It rejected the district court's hypothesis that petitioner

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[3] While the administrative proceedings preliminary to the revocation of its exemption were pending, petitioner filed a suit for injunctive relief to prevent the Internal Revenue Service from taking final action on the revocation. *Bob Jones University* v. *Simon, supra.* This Court unanimously held that the action was barred by the Anti-Injunction Act (26 U.S.C. (& Supp. III) 7421(a)) and by the Declaratory Judgment Act (28 U.S.C. (& Supp. III) 2201), but suggested (416 U.S. at 746) the refund suit procedure ultimately employed by petitioner here.

[4] Petitioner's qualification for an exemption from federal unemployment taxes (FUTA) under 26 U.S.C. 3306(c)(8) turns on its entitlement to status as a tax-exempt organization under Section 501(c)(3).

was entitled to tax exempt status because it is a "religious" institution and qualifies under the separately enumerated "religious" category of Section 501(c)(3). The court rejected "[t]his simplistic reading of the statute" as one that "tears section 501(c)(3) from its roots" (Pet. App. A7). Citing with approval the three-judge district court's decision in *Green* v. *Connally*, 330 F. Supp. 1150 (D.D.C.), aff'd per curiam, 404 U.S. 997 (1971), the court concluded that Section 501(c)(3) must be viewed against its background in the law of charitable trusts. Thus, the court of appeals agreed with the *Green* decision (330 F. Supp. at 1156-1160) that, to be eligible for tax exempt status, "an institution must be 'charitable' in the broad common law sense, and therefore must not violate public policy" (Pet. App. A7-A8; footnote omitted). Here, it stated, petitioner's racial policies violated clearly defined public policy, rooted in the Constitution and the decisions of this Court condemning racial discrimination. Since there is a government policy against subsidizing racial discrimination in education, public or private, the court of appeals held that "the Service acted within its statutory authority in revoking [petitioner's] tax exempt status * * *" (Pet. App. A10).

In so holding, the court rejected petitioner's argument that the application of the Service's nondiscrimination policy to petitioner violates the Free Exercise and Establishment Clauses of the First Amendment. Assuming that petitioner's racial discrimination is motivated by sincere religious beliefs, the court noted that the Internal Revenue Service's policy would not prohibit petitioner from adhering to its teachings or force any individual student to violate his beliefs (Pet. App. A13-A14). The court further concluded that "the uniform application of the [Service's] rule

to all religiously operated schools *avoids* the necessity for a potentially entangling inquiry into whether a racially restrictive practice is the result of sincere religious belief" (Pet. App. A16; emphasis in original).

B. Goldsboro Christian Schools—No. 81-1

1. Petitioner Goldsboro Christian Schools, Inc. is a nonprofit organization incorporated in 1963 under the laws of North Carolina. Its articles of incorporation provide that its purpose is " 'to conduct an institution or institutions of learning for the general education of Youth in the essentials of culture and its arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy scriptures * * *' " (Pet. App. 6a). At least since 1969, petitioner has maintained a regularly scheduled curriculum, a regular faculty, and a regularly enrolled student body for kindergarten and grades one through twelve (A. 10).[5] During that period, petitioner has satisfied the requirements of North Carolina for secular education in private schools.[6]

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[5] "A." refers to the separately bound record appendix filed in the court of appeals.

[6] Pursuant to N.C. Gen. Stat. § 115-255 (1978 repl.), the State of North Carolina regulates and supervises all nonpublic schools within the State serving children of secondary-school age, or younger, "to the end that all children shall become citizens who possess certain basic competencies necessary to properly discharge the responsibilities of American citizenship." In accordance with that statute, all such nonpublic schools—

> shall meet the State minimum standards as prescribed in the course of study, and the children therein shall be taught the branches of education which are taught to the children of corresponding age and grade in the public schools * * *.

Submissions to the State indicate that petitioner requires its high school students to take one Bible-related course during each semester. The remaining course requirements and offerings, as reflected in those submissions, are indicative of secular subjects. Whether the subject of the course is secular or Bible-related, petitioner's practice is to begin each class with a prayer. This practice is in keeping with petitioner's overall purpose, and the desire of its founders, to provide a secular private school education in a religious setting. Based upon an interpretation of the Bible that it purports to follow, petitioner has maintained a racially discriminatory admissions policy since the time of its incorporation. It has occasionally admitted some noncaucasian, but no black, students (Pet. App. 6a-7a).

Petitioner has never received recognition from the Internal Revenue Service as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.). On audit, the Commissioner of Internal Revenue determined that petitioner did not qualify as a Section 501(c)(3) organization, and therefore did not qualify for exemption from federal social security taxes (FICA) under Section 3121(b)(8)(B) of the Code, or for exemption from federal unemployment taxes (FUTA) under Section 3306(c)(8) of the Code. The Commissioner accordingly assessed FICA and FUTA taxes against petitioner. After making partial payment, petitioner instituted this action in the United States District Court for the Eastern District of North Carolina seeking a refund of $3,459.93 in federal witholding, FICA, and FUTA taxes for 1969 through 1972. The government counterclaimed for $160,073.96 in taxes for that period (Pet. App. 5a, 7a-8a).

2. On the parties' cross motions for summary judgment, the district court ruled that the Internal Revenue Service had properly denied petitioner exempt status under Section 501(c)(3), and the tax benefits associated with qualification as a Section 501(c)(3) organization because petitioner's policy of racial discrimination violated the declared public policy of the United States (Pet. App. 14a). For purposes of adjudicating the motion, the court assumed that petitioner's racially discriminatory admissions policy was based upon a valid religious belief (Pet. App. 7a). It concluded, however, that denying petitioner the benefits of a Section 501(c)(3) tax exemption did not abridge any rights guaranteed petitioner under the Fifth Amendment to the Constitution or under the Establishment or Free Exercise Clauses of the First Amendment (Pet. App. 12a-13a).[7] The court of appeals affirmed, with one judge dissenting. Treating the case as "identical" with *Bob Jones University*, the court of appeals upheld

[7] During the pendency of the proceedings in the district court, the government agreed to abate all FUTA assessments against petitioner for periods ending on or before December 31, 1970, and to abate all FICA assessments against petitioner for periods ending before November 30, 1970 (A. 123). The government made this concession because the Internal Revenue Service's announcement that it would no longer accord the benefits of tax exemption and deductibility of contributions to racially discriminatory private schools (I.R.S. News Releases of July 10, 1970, & July 19, 1970, *reprinted in* 7 Stand. Fed. Tax Rep. (CCH) ¶¶ 6790, 6814 (1970)), was effective as of November 30, 1970 (A. 116-117). See Internal Revenue Code of 1954, Section 7805(b) (26 U.S.C.). The government accordingly stipulated that it was entitled to recover only $116,190.99 upon its counterclaim, and the district court entered judgment in its favor in that amount (A. 122, 141).

the Internal Revenue Service's action on the authority of its decision in that case (Pet. App. 1a-3a).

The court observed (Pet. App. 2a):

> It is rare that any two cases are identical twins. Nevertheless, as it happens, there is identity for present purposes between the instant case and the case of *Bob Jones University* * * * which has just been handed down. There the taxpayer was held not to be entitled to the § 501(c)(3) exemption. In some respects, insofar as decision here is concerned, the resemblance of Goldsboro to Bob Jones University is stronger than would be the case the other way round. That is so since Goldsboro altogether prohibits admission of blacks. The University permits them to enter, but forbids certain interracial associations, especially dating and marriage.
>
> The complete and impeccable treatment by Judge Hall in *Bob Jones University* makes it supererogatory for us to discuss the issue of tax exempt status under § 501(c)(3). For that aspect we simply affirm the district court for the reasons advanced in the Bob Jones University case.

ARGUMENT

1. The decisions below correctly held that the Internal Revenue Service acted within its statutory authority in revoking petitioners' tax-exempt status under Section 501(c)(3) of the Code.

The Internal Revenue Service since 1970, the District of Columbia Circuit, and the court of appeals below have uniformly ruled that a private school does not qualify as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954, or as an eligible donee of charitable contributions deductible under Section 170(c)(2) of the Code, unless

it establishes that its admissions and educational policies are operated on a nondiscriminatory basis. This position derives its force from the congressional purpose underlying the charitable exemption provisions in the Internal Revenue Code. That purpose, to aid organizations that further some public benefit, is served by the nondiscrimination requirement. See H.R. Rep. No. 1860, 75th Cong., 3d Sess. 19 (1938). It derives also from the federal government's commitment to the eradication of racial discrimination in education manifested both in the Constitution and in many federal statutes and the national policy prohibiting public subsidy of racially discriminatory educational institutions, whether public or private. See, *e.g.*, *Runyon* v. *McCrary*, 427 U.S. 160 (1976); Section 601 of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Section 1 of the Civil Rights Act of 1866, 42 U.S.C. 1981; *Brown* v. *Dade Christian Schools, Inc.*, 556 F.2d 310, 323-324 (5th Cir. 1977) (en banc) (Goldberg, J., concurring), cert. denied, 434 U.S. 1063 (1978).

Given that public policy and national commitment, the Internal Revenue Service acted well within its statutory authority in concluding that a "religious" organization such as petitioners must satisfy the "charitable" requirement of Section 501(c)(3) in order to qualify for tax exemption. Educational institutions such as petitioners that engage in racially discriminatory practices are not "charitable" as that term is understood at common law. *Green* v. *Connally*, 330 F. Supp. 1150, 1156-1160 (D.D.C.), aff'd, 404 U.S. 997 (1971). Accordingly, the charitable exemption provisions do not countenance federal tax benefits to organizations operated for educational purposes that discriminate against students or appli-

cants on the basis of race. *Green* v. *Connally*, *supra*, 330 F. Supp. at 1179; *Prince Edward School Foundation* v. *United States*, 478 F. Supp. 107 (D.D.C. 1979), aff'd by unpublished order, No. 79-1622 (D.C. Cir. June 30, 1980), cert. denied, No. 80-484 (Feb. 23, 1981) (nonreligious private school denied tax-exempt status for failure to make requisite showing that it maintained a racially nondiscriminatory admissions policy where no black child had been admitted for a period of almost 20 years; directors' religious belief in the value of segregated education does not excuse failure to make requisite showing of nondiscriminatory policy).

2. Contrary to petitioner Bob Jones University's argument (Pet. 9), the nondiscrimination principle applied to private schools by the courts and by the Internal Revenue Service does not conflict with Congress' understanding of the requirements imposed by the Internal Revenue Code with respect to racial discrimination. By the Act of Oct. 20, 1976, Pub. L. No. 94-658, Section 2(a), 90 Stat. 2697, Congress added to the Code, "in view of national policy," the provision now contained in Section 501(i), which explicitly denies exempt status to a social club if its charter or any of its written policy statements provides for "discrimination against any person on the basis of race, color, or religion." The accompanying S. Rep. No. 94-1318, 94th Cong., 2d Sess. 7-8 & n.5 (1976), reflects Congress' intent to apply to social clubs the same antidiscrimination rule involved here. Congress was well aware of the Service's policy implemented six years earlier that discrimination on account of race is inconsistent with an educational institution's tax-exempt status under Section 501(c)(3) and also with its status as a donee of deductible charitable contributions under Section 170(c)(2). Though, as

noted, *infra*, the Congress has temporarily barred the employment of proposed new procedures to enforce the policy of the Internal Revenue Service, it has at the same time sanctioned the continuation of the substantive and procedural policies set forth in Rev. Proc. 75-50, 1975-2 Cum. Bull. 587.

3. Both Bob Jones University (Pet. 11-15) and Goldsboro Christian Schools (Pet. 23-28) seek to excuse their failure to satisfy the nondiscrimination principle on the ground that their discriminatory practices are the outgrowth of sincere religious faith. But, as the court of appeals correctly concluded, the unquestioned First Amendment right to free religious belief and exercise does not carry with it a guarantee of any person's or corporation's entitlement to tax-exempt status. As the court below pointed out in *Bob Jones University* (81-3 Pet. App. A15-A16), the Service's policy avoids excessive entanglement with religion by applying its policy to all religiously operated schools (as well as nonreligious schools). Moreover, the Service's policy does not compel petitioners or any other religious institution to alter their religious teachings, or compel their students to violate their beliefs. By requiring petitioners to show, as a condition to retaining the benefits of tax exemption, that they are operating under a racially nondiscriminatory policy, the Internal Revenue Service therefore did not encroach upon any activity entitled to affirmative constitutional protection.[8] See *Norwood* v. *Harrison*, 413 U.S. 455,

[8] Petitioner Bob Jones University's 1975 revision of its admissions and disciplinary rules rendered it no more eligible for the benefits of federal tax exemption. As the court of appeals correctly pointed out (81-3 Pet. App. A9-A10), petitioner's policy of denying admission to partners in an interracial marriage and of expelling students who date or marry

464 n.7, 468-470 (1973); *Runyon* v. *McCrary*, 427 U.S. 160, 175-179 (1976); cf. *Green* v. *Connally*, *supra*, 330 F. Supp. at 1165-1169; *Bob Jones University* v. *Johnson*, 396 F. Supp. 597, 604-608 (D.S.C. 1974), aff'd without published opinion, 529 F.2d 514 (4th Cir. 1975).

4. Although there is no conflict of appellate decisions and we believe that the decisions of the court of appeals are correct, we do not oppose the petitions in these cases. The Internal Revenue Service is currently meeting substantial resistance from church-related and religious schools to enforcement of its position that such institutions are not entitled to tax-exempt status under Section 501(c)(3) if they engage in racially discriminatory practices. This resistance is premised on the argument raised by petitioners in these cases that the Service's revocation or denial of tax-exempt status violates the First Amendment rights of such institutions. For example, in *Green* v. *Regan*, No. 1355-69 (D.D.C.), the Service is under an injunctive order to investigate certain private schools in Mississippi to determine whether they are entitled to tax exemption. There are 29 church-operated schools which have been identified as potentially subject to the court's order, and 12 of those schools have invoked the First Amendment as a bar to compliance with the Service's request for the

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outside of their race rests, as did its prior policies, upon an invidious distinction drawn according to race. See *Loving* v. *Virginia*, 388 U.S. 1, 11-12 (1967); *McLaughlin* v. *Florida*, 379 U.S. 184 (1964). Moreover, petitioner Goldsboro Christian Schools concedes (Pet. 6) that it "has maintained a racially discriminatory admissions policy since its founding." Thus, the fact of petitioners' racially discriminatory policies is beyond dispute. Cf. *Prince Edward School Foundation* v. *United States*, cert. denied, No. 80-484 (Feb. 23, 1981) (Rehnquist, J., dissenting).

information necessary to complete its investigation. Pursuant to the government's motion in *Green*, the court has suspended its injunctive order as it relates to the church schools pending resolution of the First Amendment claims.

Because of the sensitivity of claims that the Internal Revenue Service's administration of the tax laws violates the First Amendment right of schools to the free exercise of religion, and because of the strong conviction with which such claims are often asserted and adhered to, the Service has been impeded in its efforts to achieve even-handed enforcement in this area against religious institutions. Reliance on the authority of its published rulings or even on the decisions below of a single court of appeals has been inadequate to avoid unseemly confrontations with religious claims in the Service's investigations. Moreover, as petitioner Goldsboro Christian Schools observes (Pet. 18-19), Congress has introduced an element of uncertainty into enforcement procedures by prohibiting the Service from using any funds appropriated to implement or enforce any rule or procedure "which would cause the loss of tax-exempt status to private, religious, or church operated schools under Section 501(c)(3) * * * unless in effect prior to August 22, 1978." See Ashbrook Amendment (Section 103) to the Treasury, Postal Service, and General Government Appropriations Act, 1980, Pub. L. No. 96-74, 93 Stat. 559. While the Ashbrook Amendment does not apply to the instant cases because the Internal Revenue Service acted here in accordance with policies and procedures established long before August 22, 1978 (see, *e.g.*, Rev. Proc. 75-50, 1975-2 Cum. Bull. 587), it necessarily raises some questions concerning the scope of the Service's pres-

ent authority in this area and further complicates the problem of achieving even-handedness in enforcement.

The Service accordingly doubts that denial of certiorari in these cases would substantially enhance compliance with its investigative efforts in this area. Since there is no likelihood of a ruling by another court of appeals in the near future on these First Amendment questions of substantial public importance to both the Service and the institutions involved, we believe that a definitive decision by this Court will dispel the uncertainty surrounding the propriety of the Service's ruling position and foster greater compliance on the part of the affected institutions.

CONCLUSION

The petitions for writs of certiorari should be granted. The Court may wish to consolidate the cases for argument.

Respectfully submitted.

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* The Solicitor General is disqualified in these cases.

APPENDIX

Internal Revenue Code of 1954 (26 U.S.C. (1970 ed.)):

Section 170. Charitable, etc., contributions and gifts.

(a) *Allowance of deduction.*—

(1) *General rule.*—There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary or his delegate.

* * * * *

(c) [as amended by Section 201, Tax Reform Act of 1969, Pub. L. No. 91-172, 83 Stat. 487] *Charitable Contribution Defined.*—For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of——

(2) A corporation, trust, or community chest, fund, or foundation—

(A) created or organized in the United States or in any possession thereof, or under the laws of the United States, any State, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

A contribution or gift by a corporation to a trust, chest, fund, or foundation shall be deductible by reason of this paragraph only if it is to be used within the United States or any of its possessions exclusively for purposes specified in subparagraph (B).

* * * * *

Treasury Regulations on Income Tax (26 C.F.R.)

§ 1.501(c)(3)-1 *Organizations organized and operated for religious, charitable, scientific testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.*

* * * * *

(d) *Exempt purposes*—(1) *In general.* (i) An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:

(a) Religious,
(b) Charitable,

(c) Scientific,
(d) Testing for public safety,
(e) Literary,
(f) Educational, or
(g) Prevention of cruelty to children or animals.

* * * * *

(iii) Since each of the purposes specified in subdivision (i) of this subparagraph is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes. If, in fact, an organization is organized and operated exclusively for an exempt purpose or purposes, exemption will be granted to such an organization, regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the ground that it is "educational," exemption will not be denied, if, in fact, it is "charitable."

(2) *Charitable defined.*—The term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social

welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

* * * * *

(3) *Educational defined.*—(i) In general.—The term "educational", as used in section 501(c)(3), relates to—

(a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or

(b) The instruction of the public on subjects useful to the individual and beneficial to the community.

* * * * *

(ii) Examples of educational organizations.—The following are examples of organizations which, if they otherwise meet the requirements of this section, are educational:

Example (1). An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

* * * * *

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