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TAX EXEMPTION FOR PRIVATE SCHOOLS

One of the three legs upon which the late 20th century version of the "separation of church and state" doctrine has been erected is the theory that our nation should not risk any government "entanglement" with churches or church-supported schools. That theory has been a pillar in the decisions by which the Supreme Court has declared unconstitutional almost all types of aid to religious schools.

The Reagan Administration has now proposed a new bill which would mandate excessive government entanglement with church schools on a scale never before contemplated in any previous statute. The bill would amend the Internal Revenue Code in order to prohibit tax-exempt status for organizations (including churches) which maintain schools with "racially discriminatory policies."

What is a "racially discriminatory policy"? Ah, there's the rub. The bill purports to define it but, because of the use of vague and undefined words, the statute would give a blank check to the already-assertive Internal Revenue Service to investigate and supervise religious schools down to the smallest detail of their operations and beliefs, and then impose oppressive compliance and enforcement procedures.

It is clear that, under the proposed bill, "discrimination" applies not only to overt acts, practices or policies. It also applies to beliefs.

The bill includes in its definition of "racially discriminatory policy" any "program of religious training" if it is "based upon race or upon a belief that requires discrimination on the basis of race." It is unprecedented for the U.S. Government to be in the business of judging and evaluating, and rewarding or punishing, certain beliefs.

The effect of the bill would be to establish a two-tiered standard for freedom of religion in America. If your religious beliefs conform to public policy, you receive a governmentally-granted financial reward (tax-exempt status). If your religious beliefs do not conform to public policy, you are punished by governmentally-enforced financial penalties (denial of tax-exempt status).

What happened to the precious First Amendment notion of freedom for the thought (or religion) we hate? Somehow, there is a double-standard silence from the liberals who usually intone so piously about the danger of "thought control."

Individual Americans are entitled to governmental protection of their constitutional and civil rights. But, until now, nobody ever thought that government had a right to punish anybody's "belief," even by withholding tax-exempt status.

The bill would give unrestrained authority to the Internal Revenue Service which has already demonstrated in recent years its eagerness to make arbitrary regulations far beyond what the statutes authorize. Based on past performance, it is clear that IRS would rule three strikes against religious schools: (1) "you're guilty until you prove yourself innocent," (2) "you can prove yourself innocent only by a vigorous affirmative action (reverse discrimination) policy," and (3) "you will be judged by the effect of your actions rather than by your purpose."

Whatever the justice of arguments for affirmative action in other areas, when used in the context of religious schools it is a frontal assault on freedom of religion. A religious school should have every right to handle student admissions, faculty hirings, and trustee selection on the basis of membership in the religious denomination that built, finances and maintains the school. Affirmative action to achieve racial quotas would be a grievous interference with the purposes of any religious school.

The bill adds insult to injury by being retroactive to 1970. What kind of justice is that? Furthermore, the bill denies tax-exemption to contributors even though the contributor-taxpayer may not subscribe to the alleged offensive policy or belief of the religious school which is judged non-tax-exempt.

We have previously voiced complaints about the courts' arrogating to themselves powers that properly reside in another branch of the government. This case is an example of the Justice Department intefering with a case that was properly and already before the Supreme Court (the Bob Jones University case), and on which briefs had already been presented.

This is not a race case but a freedom of religion case. In the name of the First Amendment, Congress should reject this bill.