Report from the Capital

June 1978

Analysis

1978: Is This the Year for Tuition Tax Credits?

By Carol B. Franklin

Managing editor's note: The following analysis of the prospects for tuition tax credit legislation during the current Congress was written several days before the House of Representatives voted approval of such a measure.

WASHINGTON—Despite determined opposition and serious constitutional questions, this could be the year for tuition tax credits. Support for such legislation appears almost unbeatable in Congress at this time.

The House of Representatives has sent the most recent message that it reads the public mood as favoring tuition tax credits and it intends to satisfy the public regardless of Administration opposition or heavy lobbying by the public school interests.

The House Budget Committee recommended strongly against adoption of any provision for tuition tax credits in the budget resolution for 1979. The recommendation met a head-on challenge when the resolution reached the floor for debate. By a 227 to 136 vote, the House voted to make room in the budget for $635 million in tuition tax credits. That amendment, introduced by Rep. Thomas A. Luken (D-Ohio), replaced an earlier amendment by Rep. Lawrence Coughlin (R-Penn.) calling for $500 million in tuition tax credits.

Consideration of a similar budget resolution earlier in the Senate produced a similar result by default. The Senate budget panel had left room in its proposal for tuition tax credits. Opponents in that body chose not to fight the issue in this round.

This budget resolution is not binding. It serves as an advisory for legislation in the next few months. A final budget resolution in September will be binding. The new fiscal year will begin October 1.

A staffer on the House Budget Committee commented that the vote in the House might not indicate how a final vote would go. "It was a cheap vote in favor of tuition tax credits," he said. "Now a representative can go home and say 'I voted for it' but still change his vote when the actual legislation comes up later."

In the past the Senate has approved tuition tax credit legislation six times. In

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House Passes Tax Credit Measure

By Carol B. Franklin and Stan L. Hastey

WASHINGTON—The House of Representatives approved, 209-194, a tuition tax credit proposal for parents of students enrolled in nonpublic, parochial schools.

The action marked the first time the House has passed such legislation, although the Senate has approved tax credits on several previous occasions. That body is expected to pass a new tax credit bill within the next few weeks.

While the House action is a disappointment to opponents of tax credits, it may prove to be only a temporary defeat. President Carter has promised to veto any such legislation.

Vanik

The narrow victory for elementary and secondary tax credits came on an amendment by Rep. Charles A. Vanik (D-Ohio). Vanik cited figures estimating the cost of the measure to the U.S. treasury at $25 million in fiscal year 1978 in lost revenues. That figure would increase to $1.26 billion by 1981, according to Vanik. Other estimates, including one cited by Associated Press, run much higher.

Opposition to extension of the tax credit to the elementary and secondary levels focused on civil rights and the separation of church and state. Rep. Parren J. Mitchell (D-Md.) objected strenuously to passage of any part of the measure on the grounds that it would reverse desegregation efforts.

Rep. John Buchanan (R-Ala.) explained that he had supported tuition tax credits when the idea was first proposed but noted that "tuition tax credits have failed the test of open public debate and intense statistical and legal review." He pointed out that the attorney general has stated that tuition tax credits for nonpublic elementary and secondary education "appear to violate the First Amendment guarantee against the establishment of religion."

"I believe that we must be extremely careful that we do not take any action that may infringe on the very basic doctrine of separation of church and state," Buchanan said. "To force taxpapers of another faith to bear additional tax burdens so that my child can attend by my choice a sectarian school of my faith is of questionable constitutionality."

The House rejected an attempt to increase the portion of tuition eligible for the tax credit from 25 percent to 50 percent. The vote was 142 ayes to 261 noes.

Also rejected was a substitute motion which would have provided deferral of income taxes for college tuition. This proposal, introduced by Rep. Abner J. Mikva (D-Ill.), would have allowed the taxpayer to repay the amount of taxes deferred over a period of 10 years at an interest rate of three percent.

The measure as passed by the House would allow the taxpayer to reduce federal income taxes by 25 percent of the amount spent on college tuition up to a maximum of $100 per student this year, $150 in 1979 and $250 in 1980.

At the elementary and secondary level the credit would allow 25 percent of tuition up to $50 per pupil this year and $100 in 1979 and 1980.

Several obstacles remain before the tuition tax credit becomes public law. The U.S. Senate must pass a similar bill to

(See HOUSE, p. 7)

From the Desk of the Executive Director

Lobby Reform or Government Monitoring?

By James E. Wood, Jr.

A serious effort is now being made in the Congress to enact sweeping and unprecedented legislation to require all organized political activity to be accountable to and to come under the close scrutiny of the federal government. The legislation, if enacted in its present House and Senate versions, would require a massive monitoring of all advocacy groups by the federal government through the creation of what someone has appropriately called "an IRS for lobbying."

Wood

While the rationale for this legislation is presumably justified as being in the "public interest," the legislation would actually result in the surveillance by government of all organized political activity throughout the nation, especially by national organizations, citizens' groups, and religious denominations. One version, H.R. 8494, which passed the House on April 26 by a vote of 259-140, was made even more stringent than originally introduced by two amendments requiring disclosure of grass-roots lobbying efforts and the names of major organizations contributing to advocacy groups. An even stricter version is now before the Senate Governmental Affairs Committee. Lobbying efforts of the President and the White House staff in recent weeks have been directed toward the Committee's acting favorably on a strong lobby disclosure bill. The persistent pressure being exerted by the President may make critical the final disposition of this legislation in the Senate during the next few weeks.

The proposed lobby disclosure bills as passed by the House and now in the Senate are intended to replace the Federal Regulation Lobbying Act of 1946. Earlier efforts during the last Congress to pass stricter legislation failed since it never went to conference and simply died at the end of that session. Subsequently, lobby disclosure legislation has been primarily pushed by Common Cause, a heavily funded national organization which has conducted an organized campaign for such legislation during the past four years.

The leadership role of Common Cause on behalf of the enactment of such legislation is especially ironic in view of the inhibiting effect of such legislation, if enacted, on small advocacy groups, citizens' lobbies, and the churches, which maintain public affairs programs not out of self-interest in the traditional sense, but because of their commitment to causes deemed by these groups to be beneficial to the common good and the public interest. Certainly, it is extremely difficult to ascertain wherein the public interest is served by legislation that has been pushed primarily by an organization that came into being allegedly to serve the public interest and to encourage rather than discourage citizen participation in public affairs and citizen involvement in the making of public policy.

Happily, with increased public awareness of the implications of such legislation, opposition to government monitoring of virtually all political activity has been mounting. While the legislative intent has not been generally impugned by advocacy groups and the churches, serious objections have been raised primarily on the advocacy role of such groups and the churches. It is widely agreed that the legislation would have little effect on large lobbies, but would impose a substantial burden on marginal groups, small organizations and citizens' groups, as well as the churches and associations of churches.

Contrary to a report published in the *Congressional Quarterly*, strong opposition to this legislation has been expressed by the American Civil Liberties Union and virtually every segment of the religious community—Protestant, Catholic, and Jewish. One critic has called the House bill a 36-page exception to the First Amendment and a terribly muddled one at that. ACLU testimony submitted earlier this year declared, "We believe that if there is any abuse or appearance of abuse in lobbying, it is to be found in gifts and direct contacts with members of Congress . . ." not in "the advocacy of ideas."

The Executive Director of the Lutheran Council Office for Governmental Affairs, Charles Bergstrom, has expressed a view widely shared by religious denominations that the gentlest thing to be said about the bill (H.R. 8494) "is that it is clumsy, oppressive, and vindictive." An even worse version is being considered in the Senate (S. 1785), with lower thresholds and even more stringent provisions than the House version. The Senate bill would require any corporation, organization, or church to register with the government and to open its records to federal inspection if it received $3,000 or more from any organization or individual, any portion of which was used for "lobbying communication" and if it spent $5,000 or more on advertisements, mailings, or any other efforts to get people to contact Congress about anything—even if the organization itself never got directly in touch with lawmakers or federal employees at all. We believe that such legislation goes far beyond the legitimate bounds of government power into the realm which rightfully belongs to citizens without accountability to government.

Having sat through hours of House debate on lobby disclosure, I found myself in complete agreement with the *Washington Post* editorial a few days afterwards which declared, "There were indications in the House debate that some lawmakers regard disclosure laws as ways to punish, inhibit, or embarrass various lobbyists with whom they disagree. Such sentiments lead right down the slippery slope toward impermissible interference with citizens' liberties." Far from discouraging advocacy groups and the churches, government should do all it reasonably can to encourage the role of advocacy among citizens' groups and voluntary associations generally.

For the churches, all of these objections to lobby disclosure legislation are accentuated by the cumulative effect of such legislation on the abridgement of "the free exercise of religion." To witness in public affairs is for the churches integral to the free exercise of religion. To be accountable to the federal government is itself incongruous with the prophetic role of religion in a free society. The effect of such legislation, no matter what its declared intent, is to inhibit the witness of the churches in public affairs.

Since 1961 the U.S. Supreme Court has on at least sixteen occasions stated that the "primary effect" of a government act or regulation must be neither to advance nor to inhibit religion.

(See MONITORING, p. 7)

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WITH HOUSE PASSAGE ON JUNE 1, tuition tax credit legislation is dangerously closer than ever to becoming public law. The Baptist Joint Committee staff has worked hard in cooperation with many others in Washington seeking to kill the legislation due to the conviction that enactment would mark a major departure in public policy regarding public education.

BESIDES THIS AGENCY'S view that tax credits amount to bad public policy, the BJCPA is likewise convinced that the legislation passed by the House and an even worse bill awaiting full Senate action are clearly unconstitutional. You will want to note Executive Director James E. Wood, Jr.'s statement beginning on p. 7.

IN OTHER PENDING CONGRESSIONAL business, the Labor-HEW appropriations bill (H.R. 12929), which was tied up for several months last year because of an anti-abortion rider, is again before the House. The compromise language reached last year between the House and Senate which brought the protracted delay to an end has been struck and replaced with the language which started the fight last year.

AS OF THIS WRITING, the bill reads that no funds "shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term." The compromise passed in last year's appropriation for Labor-HEW permitted abortions not only to save the mother's life, but in instances of danger to the physical health of the mother, as well as in rape and incest cases.

A NUMBER OF BAPTIST GROUPS, including both the American Baptist Churches in the U.S.A. and the Southern Baptist Convention, have repeatedly gone on record supporting abortion in all instances cited in the compromise language and in some other cases as well.

THE BJCPA STAFF IS under instruction to oppose all efforts to amend the Constitution so as to reverse the effect of the historic 1973 Supreme Court decisions permitting most abortions. Perhaps the most serious challenge to overturning the high court's action is an effort by the so-called pro-life movement to call a federal constitutional convention to take up the matter. To date, twelve state legislatures have passed resolutions calling for such a convention.

Supreme Court Update

Court Excludes Children from Obscenity Standards

By Stan L. Hastey

WASHINGTON—In yet another effort to clarify its position on obscenity and pornography, the U.S. Supreme Court ruled here that children may not be included in the determination by juries of what constitutes "community standards."

The high court ruled 8-1 that William Pinkus, a California man twice convicted on 11 counts of violating a federal law forbidding using the mail service to send out obscene materials, is entitled to further review of his case because the presiding judge at his trial erred by instructing the jury to include children in determining community standards for obscenity.

Writing for the majority, Chief Justice Warren E. Burger ordered the case sent back to a federal court of appeals for further review and new sentencing. Pinkus' conviction carried with it a sentence of four years in prison and $5500 in fines.

Pinkus was convicted in 1971 under obscenity guidelines established by the high court in cases dating to 1957 and 1966. Two years after his conviction, the court established new guidelines for determining obscenity in *Miller* v. *California*. That case set forth the rule that materials may be found obscene if they go beyond "contemporary community standards."

The jury at Pinkus' trial was instructed "to consider the community as a whole, young and old, educated and uneducated, the religious and the irreligious, men, women and children, from all walks of life."

Pinkus argued before the high court that the inclusion of children to arrive at an obscenity standard for the entire community was improper because the materials were not mailed to nor were they intended for children.

Although the high court majority agreed with Pinkus on that question, it rejected three other contentions.

The jury instruction to include "sensitive persons" in arriving at a definition of community was proper, the court held, because "the community includes all adults who comprise it."

The court also rejected Pinkus' claim that so-called "deviant" sexual groups, such as sado-masochists and fetishists of various kinds, ought to be included in the judge's charge to the jury. A majority of the justices also agreed that advertisements sent to potential customers which were themselves obscene could be used as evidence against Pinkus.

The court's main finding, however, was the exclusion of children as part of the community standard to judge obscenity. Only one justice, Lewis F. Powell, Jr., dissented, saying in a two-sentence statement that he viewed the judge's error in including children in his charge to the jury as "harmless."

Three other justices indicated they felt the court did not go far enough. Speaking for fellow justices Potter Stewart and Thurgood Marshall, justice William J. Brennan, Jr. declared that while he agreed with the court's main finding relating to children, he would have preferred that the court declare the anti-obscenity law in question "clearly overbroad and unconstitutional on its face."

Although those three justices, along with justice John Paul Stevens, would like to see the court scrap the "community standards" doctrine in favor of a more open standard in judging obscenity cases, the other five justices, led by Chief Justice Burger, continue to believe that local communities should determine what is obscene within their own jurisdictions.

As long as the high court majority prevails in that viewpoint, the justices can expect a continuing stream of cases occasioned by the nebulous standard. (BP)

Court Upholds Sodomy Laws

WASHINGTON—States may continue to enforce their laws against sodomy, the Supreme Court said in effect here.

By refusing to hear the appeal of a North Carolina homosexual convicted of violating the statute, the high court for the second time in the past two years has given the green light to the enforcement of such laws.

Eugene Enslin, of Jacksonville, N.C., was convicted four years ago of engaging in oral sex with a 17-year-old Marine in the back room of a combination massage parlor, pornographic bookstore, bar, and sporting goods store. Both sides acknowledged at trial that detective Sam Hudson of the Jacksonville police department set up Enslin in order "to run (him) out of town."

Hudson said the he sent Herbert P. Morgan, the young Marine, to Enslin's es-

(See SODOMY, p. 7)

Quaker Loses Last Appeal in Tax Fight

WASHINGTON—The long legal battle of a conscientious objector who sought to escape paying some of his federal income taxes during the Vietnam War came to an end here when the Supreme Court refused to review his appeal.

Robert L. Anthony, a Quaker and opponent of the war in Indochina, claimed what he called "war crime deductions" on his income tax returns for the years 1969-72. Predictably, the Internal Revenue Service brought him to court.

The U.S. Tax Court disallowed Anthony's motion to present testimony in his case and summarily ruled against him. On appeal to a federal circuit court, Anthony again lost. That court held that his religious beliefs did not "alter his obligation to share the common burden" of paying taxes for military purposes.

The court of appeals went on to declare that "nothing in the First Amendment grants immunity from otherwise valid legislation of general applicability merely because an individual disagrees, on religious grounds, with government policy."

Attorneys for Anthony asked the Supreme Court to review his conviction, arguing that he could not pay taxes for the waging of war "without effectively losing his freedom to exercise his religion."

Anthony converted from the Episcopalian faith to the Quakers during World War II because of the latter group's historic opposition to war. He argued through his attorney that "the history of Quaker peace testimony supports not only the withholding of one's body as a weapon of war, but also one's money."

He went on to maintain that to pay taxes for the support of warfare "would be to join an established religion which pledges its allegiance in war and war taxes and receives religious exemptions from taxation . . . for other less compelling interests than one's conscience."

The high court's unanimous rejection of those arguments has the effect of letting stand the decision of the court of appeals and of forcing Anthony to pay back taxes and interest. (BP)

New Sabbath Legislation Covers Federal Workers

WASHINGTON—Federal employees whose religious obligations require them to miss work from time to time would be allowed to work overtime under a provision of the Federal Employees Flexible and Compressed Work Schedule Act of 1978, which passed the House of Representatives.

Present policy does not allow such compensatory time because the time-and-a-half pay rate for overtime is too expensive. Under the new law the overtime pay for work to make up time lost for religious obligations would be at the normal pay rate.

The amendment which provides for this overtime work was introduced by Rep. Stephen J. Solarz (D-N.Y). Solarz noted that "members of minority faiths must either choose between reduced incomes or diminished annual leaves if they are to abstain from work during certain periods of time, as they are required to do by their religion."

Rep. Gladys N. Spellman (D-Md.) said that many people have very little vacation time because it is used up a few hours at a time throughout the year. This is true of Jews who must get home on Friday before sundown, she pointed out. At present, that time is deducted either from the employee's salary or annual leave time.

The Solarz amendment would allow employers to provide overtime work at a normal pay rate on days when an employee has no religious obligations. The law would not require that such overtime be provided.

Rep. Robert F. Drinan (D-Mass.), a Roman Catholic priest, introduced a bill last year which would have provided much more sweeping protection of minority groups' religious rights. That measure would have required an employer to respect religious beliefs, practices, and observances of employees unless such accommodation would cause "severe pecuniary or other material loss" to the employer.

Drinan's bill has not been acted on by the House. In the meantime, Solarz' more limited measure will go next to the Senate. (BP)

Analysis

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February of this year the Senate Finance Committee approved a bill (H.R. 3946, the so-called Packwood-Moynihan bill) which would provide a tax credit of 50% to a $250 maximum for college students and postsecondary vocational students effective August 1, 1978. In 1980 the Senate version would increase to a $500 maximum. The eligibility would expand to include elementary and secondary students. Graduate and part-time students would be added in 1981. This bill would make the credit refundable.

The House has given a cool reception to the idea of tuition tax credits in past years. However, last fall 311 representatives voted to include such credits in the final budget resolution for 1978. The necessary legislation to implement that vote was not passed.

In this session of the 95th Congress more than half the members of the House have indicated support for some form of education tax credit. Rep. Al Ullman (D-Ore.), chairman of the House Committee on Ways and Means, opposes tuition tax credits but agreed to hold hearings and vote out a bill because of the strong sentiment in the House. The bill voted out was considerabley watered down from earlier proposals. H.R. 12050 would provide a credit of 25% to a maximum of $100 for college students, postsecondary vocational students and half-time students effective August 1, 1978. In 1979 the maximum would increase to $150 and to $250 in 1980. The House version makes the credit non-refundable.

Amendments on the House floor will be allowed which would restore the credit to 50% and include parents of nonpublic elementary and secondary school children. An alternate proposal is also expected which would substitute tax deferral for the tax credit.

The popularity of tuition tax credits seems to stem from two factors—a taxpayer reaction to the high cost of everything and growing disenchantment with public schools.

At a pro-tuition tax credit rally held at Lafayette Park, across the street from the White House, about 50 Catholic supporters of the legislation gathered to protest the "anti-Catholic bigotry" which supposedly motivates opponents of the credits and to attack President Carter's alleged failure to keep his campaign promise to find constitutional means of aiding the parents of private school children.

Opponents of the tuition tax credits have sounded the alarm charging that such credits would do irreparable harm to the public school system which has contributed to the unity of our nation and would also violate the First Amendment to the Constitution which provides for separation of church and state.

James E. Wood, Jr., executive director of the Baptist Joint Committee on Public Affairs, charges, "Serious constitutional questions would be raised by such legislation in view of major decisions made by the U.S. Supreme Court during the present decade outlawing public funds for parochial schools."

President Carter has strongly opposed tuition tax credits. He has said that he probably would veto any such legislation and is pushing for expanded education loan programs for middle income families instead.

Congressional strategy is not yet clear. If proponents really mean to pass tuition tax credits, they will probably attach an amendment to a veto-proof bill. However, if they are merely seeking political points at home they may pass a "clean" bill which the President can veto leaving them free to claim to have done all they could for the folks back home.

Failing a presidential veto, or if Congress overrides a veto, opponents are depending on the Supreme Court to rule against tuition tax credits in any legal challenge. (BPA)

Wood (Continued from p. 7)

neither advances nor inhibits religion, and (3) the statute must avoid excessive government entanglement with religion. Tuition tax credit legislation fails on all three counts. Should such legislation therefore pass the Senate and be enacted into law, litigation in the courts is assured.

To aid church or parochial schools which are essentially by their very nature a part of the religious mission of a church is an assault on the First Amendment. The legislation which passed the House is bad public policy, financially inequitable, and simply incompatible with the guarantees for a free and democratic society. The legislation clearly ignores the separation of church and state in the implementation of public policy. Hopefully, the President's veto will not be overridden and this legislation will never be enacted into law.

Tuition Tax Credit Vote Draws Sharp Reactions

By Religious News Service

WASHINGTON—Officials of the Roman Catholic Church and the Lutheran Church-Missouri Synod—which operate more than half of the nearly 18,000 nonpublic elementary and secondary schools in the United States—have reacted enthusiastically to the House of Representatives approval of federal income tax credits for tuition-paying parents.

But a coalition of religious groups who opposed the measure echoed the response of Secretary of Health, Education and Welfare Joseph A. Califano Jr., who said: "The parochial schools of this country will never see a dollar of the unconstitutional aid because the courts will invalidate it."

Bishop Thomas C. Kelly, O.P., general secretary of the United States Catholic Conference, called "most encouraging" the 237-to-158 House vote providing tax credits up to $250 by 1980 for college tuition and up to $100 for nonpublic elementary and secondary school tuition.

A credit is subtracted directly from taxes owed as opposed to an exemption or deduction which is subtracted from gross income before taxes are calculated.

"It promises to be of great benefit to parents who must meet the cost of educating their children, and it certainly is in the best interests of the nation," Bishop Kelly said.

Al H. Senske, secretary of elementary and secondary schools for the Lutheran Church-Missouri Synod, which operates the largest number of Protestant schools in the country, said he was "very pleased" by the House action sending the measure to the Senate.

Senske disagreed with Califano's statement. "Tax credits go directly to the parents, not to the schools. This will not be a problem for the courts because it avoids the question of church-state entanglement," Senske predicted.

Virgil C. Dechant, top official of the Knights of Columbus which joined other Catholic organizations supporting tax credits, also hailed the House measure as "a unique opportunity to provide educational justice. Because of spiraling costs, the vaunted freedom of education for Americans swiftly is becoming only a paper liberty except for the rich," Dechant said.

Favorable reaction also came from the Congress of Racial Equality which broke ranks with other black organizations generally opposed to tax credits.

CORE associate national director Victor Solomon said the House vote was the "beginning of recognition that a great number of people, especially minorities, want an alternative to public schools and need relief from the double burden of taxes and tuition.

"Tuition tax credits are one effective way of increasing the choices available to poor people," Solomon said.

But Methodist Bishop James K. Mathews, president of the National Coalition for Public Education and Religious Liberty (PEARL), argued that tax credits would benefit those needing aid the least—the upper and middle class—and would damage the nation's public school system.

Andrew L. Gunn, PEARL board member and executive director of Americans United for Separation of Church and State, said that the House bill would cause "incalculable damage to public schools and tax all Americans to support the fragmentation of our children and our society."

Members of PEARL include the Baptist Joint Committee on Public Affairs, the American Jewish Congress, the Board of Church and Society of the United Methodist Church, and Americans United for Separation of Church and State.

The National Council of Churches, representing 31 Protestant and Orthodox religious bodies, also has opposed tax credit proposals, but a spokesman declined comment on the House action.

The key action in the House came on an amendment offered by Rep. Charles Vanik (D-Ohio) that added tax credit relief for parents of nonpublic elementary and secondary students to a tax aid bill aimed only at tuition-paying parents of college students. The Vanik rider squeezed by on a 209-to-194 vote.

The House-approved measure, however, faces an uncertain future. It is expected to pass the Senate which has six times previously passed tax credit bills, but President Carter has threatened to veto any bill including aid below the college level. Attorney General Griffin B. Bell has predicted that the Supreme Court would rule such aid unconstitutional.

Observers here doubted there was enough congressional support to override in the event of a presidential veto.

According to a National Center for Education Statistics survey, there are an estimated 4.8 million students in 17,950 nonpublic elementary and secondary schools, in the country. Over 3.1 million attend the 8,986 Catholic schools, and 166,108 attend the 1,314 Lutheran Church-Missouri Synod schools.

The statistics include 87,917 students in 310 Baptist schools; 47,129 in 182 Calvinist; 73,774 in 304 Episcopal; 59,810 in 264 Jewish, and 46,998 in 517 Seventh-day Adventist schools. (RNS)

UN Reform Subject of Washington Group

WASHINGTON—United States attitudes contributed to the deterioration of the United Nations, an aide to Sen. George McGovern told the members of the Council of Washington Representatives on the UN here.

John D. Holum, legislative assistant to the South Dakota senator, said that behavior such as one-time UN ambassador Daniel Patrick Moynihan's indicated that the United States held the UN in contempt. Moynihan was known for his emotional outbursts and verbal attacks on fellow delegates in the General Assembly of the UN.

Holum's remarks were made at the annual meeting of the Council. The discussion centered on President Jimmy Carter's recommendations for reforming the United Nations. McGovern introduced legislation last year to achieve reform of the UN.

The proposed reforms would focus on five areas—peace, security, and strengthening international law; decision-making processes in the UN; human rights; financing the UN; and achieving greater efficiency in the UN.

Gerard J. Mangone of the University of Delaware, who served six years ago on the Lodge Commission which made many similar recommendations for UN reform, commented that "tinkering with institutions does not go to the heart of the problems with peace" but "the United States should be outspoken on institutions nonetheless."

James E. Wood, Jr., executive director of the Baptist Joint Committee on Public Affairs, was re-elected chairman of the Council of Washington Representatives on the UN. (BP)

House

(Continued from p. 1)

that passed by the House, an action widely expected. Six times previously, the Senate has passed similar legislation only to be stymied by the House's failure to act.

After Senate passage of a tax credit bill, the two measures would go to a conference committee comprised of members of both bodies designated by Senate majority leader Robert C. Byrd (D-W.Va.) and house speaker Thomas P. O'Neill, Jr. (D-Mass.). That group would hammer out a compromise reconciling differences in the two bills.

The conference-approved measure would then go back to both bodies for final approval. Some observers here are noting that due to the close House vote on tax credits to parents of elementary and secondary students, the conference version might be defeated in that body if it contains a substantially higher credit than the $100 passed by the House.

Even if both the House and Senate agreed to the compromise measure, President Carter has repeatedly promised to veto any tax credit bill. He and HEW Secretary Joseph A. Califano, Jr. have been pushing Congress for an expansion of the federal tuition scholarship programs for college students. Califano was outspoken in his criticism of House passage of the tuition tax credit measure, calling it an "unconstitutional" bill. (BP)

Wood: House Action 'Major Reversal'

Managing editor's note: BJCPA Executive Director James E. Wood, Jr. released the following statement after the House of Representatives passed a tuition tax credit bill.

The unprecedented action by the House on June 1, 1978, in passing tuition tax credit legislation, represented a major reversal of American public policy. If enacted into law, this legislation would deal a serious blow to public education and would result in a severe erosion of the First Amendment, both with regard to the free exercise of religion and to the no establishment of religion. To declare that such action by the House, in the words of Senator Daniel Patrick Moynihan (D-N.Y.), "has overturned the religious bigotry of the 19th Century," is rhetoric that has little basis in reality or principle.

The action by the House is an unprecedented reversal of public policy in that the legislation seeks to provide funds to nonpublic schools which maintain and emphasize an essentially private character. In fact, the legislation provides funds to be used to preserve the private and religious character of nonpublic schools throughout the nation in the face of tax-supported public schools which are politically controlled and subject to rulings of the courts with regard to maintaining a public character in curriculum, faculty, and admission policies.

Serious constitutional problems are directly raised by this legislation. In both *Committee for Public Education v. Nyquist* and *Grit v. Wolman* the U.S. Supreme Court struck down statutes in New York and Ohio providing for tuition reimbursements and tuition tax credits. H.E.W. Secretary Joseph Califano wisely reminded the Congress after the House's action: "The parochial schools of this country will never see a dollar of the unconstitutional aid the House voted today because the courts will invalidate it."

The action of the House violates the three-prong test established to determine the constitutionality of any government act, namely, that (1) it must have a secular legislative purpose, (2) it must have a "primary effect" that

(See WOOD, p. 5)

Sodomy

(Continued from p. 4)

tablishment to entice him into committing sodomy. Enslin was nevertheless convicted and sentenced to one year in prison.

In written legal papers submitted to the high court asking for review of the case, Enslin's attorney argued that "private consensual adult sexual behavior" should not be regulated by statute. He also held that the U.S. Constitution guarantees personal privacy "from unwarranted governmental interference."

The attorney, who works for the Lambda Legal Defense and Education Fund of New York City, also argued that North Carolina's anti-sodomy law violates the establishment clause of the First Amendment, although he failed in the legal brief to explain.

Commenting on that argument for the state, North Carolina attorney general Rufus Edmisten said that the law does not "impose a rule of conduct on citizens for basically religious objectives." The law, he said, was enacted for the protection of public decency, not for specifically religious reasons.

The case has been in both state and federal courts for the past four years. Earlier, two North Carolina courts, including the state Supreme Court, as well as a federal district court and federal court of appeals had declined to review the conviction.

Only two U.S. Supreme Court justices, William J. Brennan and Thurgood Marshall, voted to hear Enslin's appeal. (BP)

Monitoring

(Continued from p. 2)

The inclusion of the churches in lobby disclosure legislation clearly fails still another test of constitutionality. The Court has ruled that the statute and its administration must avoid "excessive entanglement" with religion. Since 1970, the Court has applied this test in no less than ten church-state cases.

Even its most ardent opponents admit that lobby disclosure legislation does not aim at any regulation of lobbying abuses. At the same time, the legislation fails to provide a case for any compelling state interest in the mass of data which such government surveillance would effect in an ever-expanding government bureaucracy. During the past decade in its exercise of surveillance the federal government has frequently invaded the right to privacy of multitudes of American citizens.

Under the protection of the First Amendment, the exclusion of the churches from lobby disclosure legislation is crucial to the uninhibited and free exercise of religion in a free society. As Francis Pickens Miller wrote two decades ago, "The Constitution separates the *structures* of state and church but it assumes a free impact of the Christian conscience upon the affairs of state." Now is the time to make your views known to your senators and to the Senate Governmental Affairs Committee on this important legislation.

New BJCPA Book Major Contribution to Field of Taxation and the Churches

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Editor: James E. Wood, Jr.
Managing Editor: Stan L. Hastey
Contributing Editors: John W. Baker
W. Barry Garrett
Circulation Assistant: Helen M. Dunnam

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