

Honorable George Miller
Chairman
Committee on Education
and Labor
2181 Rayburn Office Building
Washington, D.C. 20515

Honorable Howard P. "Buck" McKeon
Ranking Member
Committee on Education
and Labor
2101 Rayburn House Office Building
Washington, D.C. 20515

November 13, 2007

Re: Oppose Any Discriminatory Amendment to the College Opportunity and Affordability Act that Could Force Accreditation of Universities that Engage in Discrimination

Dear Chairman Miller and Congressman McKeon:

The undersigned organizations strongly urge you to oppose any amendment to the College Opportunity and Affordability Act of 2007 (H.R. 4137) that would allow religious institutions to discriminate yet still receive accreditation.

We are aware of a proposed amendment that would require educational accrediting agencies or associations to consistently apply and enforce standards that respect the stated mission of the institution of higher education, including religious missions. With respect to most institutions of higher education, secular and religious, this provision would not appear problematic. If adopted, however, the Department of Education could use this provision to commandeer private accrediting associations to compel the accreditation of universities that engage in discrimination.

The nation has a long and shameful history of colleges and universities that have discriminated against faculty and students. Perhaps the most infamous university with a record of discrimination against its faculty and students is Bob Jones University. From its founding in 1927 until its tax-exempt status was threatened in 1971, it completely prohibited African-American students from enrolling. For the next four years, Bob Jones University barred unmarried African-American students, but allowed the admission of any married African-American student who was married to another African-American. After a 1975 Supreme Court case compelling the integration of a private school, Bob Jones University admitted unmarried African-American students, but barred dating or marriage by students to anyone other than a member of the student's own race. After intense public scrutiny during the 2000 presidential race, the university's president claimed that he would end the policy. In addition, the university has a history of discrimination against Catholics and gay and lesbian students. The university's founder called the Catholic Church a "satanic cult," and the university has told gay and lesbian alumni that they may not return to the campus.

Bob Jones University paid a heavy price for its discrimination. It receives no federal funds, its students do not receive federal financial assistance, and it lost its tax-exempt status in an historic decision by the Supreme Court. After 78 years without accreditation, it finally received status as a “candidate institution” with a federally recognized accreditation association in April 2005. It seems a safe assumption that Bob Jones University would not have received accreditation by any federally recognized accreditation body if it continued its interracial dating and marriage prohibition.

Bob Jones University spent decades defending its racist policies based on a religious belief against interracial dating or marriage. It has made similar religious defenses of its past anti-Catholic and anti-gay statements. In the case upholding the invalidation of its tax-exempt status, the Supreme Court described Bob Jones University’s religious reasons for its dating and marriage policy--and specifically quoted the university’s religious mission statement.

If this amendment passes, the historical role of accreditation associations in ending discrimination in education will be thrown into jeopardy. Universities that adopt the racist policy that Bob Jones University claims to have discontinued could claim that the language of this amendment requires even private accrediting associations to “respect” their “religious mission,” even if that means accrediting a university that engages in race discrimination. We expect that colleges and universities that would like to discriminate will pressure the Department of Education to stop accrediting bodies from refusing to accredit universities that engage in discrimination.

The concern that the Department of Education would use this amendment as authority to force accrediting bodies to accredit universities that engage in discrimination is not far-fetched. The Justice Department, during the Reagan Administration, filed an *amicus* brief before the Supreme Court on the side of Bob Jones University. This means that no less than three administrations ago, the federal government favored allowing universities to gain a federal financial benefit even when they discriminated based on race. Former majority leader Trent Lott also filed an *amicus* brief on the side of Bob Jones University.

More recently, a new line of attack has opened against private accrediting bodies, including the American Bar Association and the American Psychological Association, that include sexual orientation among the list of prohibited categories for discrimination. This attack has been launched even though these accrediting associations specifically provide that religious universities can prefer members of their own religion and have the protection that the Constitution would provide to them. If this amendment passes, the Department of Education could use it to try to force accrediting associations to abandon their carefully drafted policies in favor of complete exemptions for religious universities to discriminate.

We urge the Committee to reject any such amendment and to ensure accrediting associations are able to enforce their own nondiscrimination provisions, as well as require

compliance with federal, state, and local nondiscrimination laws. No accrediting association should ever have to accredit a university that engages in the type of racial, anti-Catholic, or anti-gay discrimination that was the hallmark of Bob Jones University for almost its entire history.

Please do not hesitate to call us if you have any questions about this matter.

Sincerely,

AFRICAN AMERICAN MINISTERS IN ACTION

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

AMERICAN CIVIL LIBERTIES UNION

AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE

GLSEN – THE GAY LESBIAN, AND STRAIGHT EDUCATION NETWORK

HUMAN RIGHTS CAMPAIGN

LEGAL MOMENTUM

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

NATIONAL COUNCIL OF JEWISH WOMEN

NATIONAL GAY AND LESBIAN TASK FORCE

PEOPLE FOR THE AMERICAN WAY

THE INTERFAITH ALLIANCE