

action would likely result in the closing of the doors of the tribally controlled postsecondary vocational institutions.

The letters follow:

WASHINGTON, DC,  
March 27, 2001.

Hon. ROD PAIGE,  
Secretary of Education, U.S. Department of Education, Washington, DC.

DEAR SECRETARY PAIGE: We write to express serious concerns about the process used by the Department of Education in issuing the March 23, 2001, Federal Register grant announcement for Section 117 of the Carl Perkins Vocational and Technical Education Act. Section 117 is specific to tribally controlled postsecondary vocational institutions, of which there are two: United Tribes Technical College (UTTC) and Crowpoint Institute of Technology (CIT).

We understand that the March 23 notice has been withdrawn for technical reasons but that the Department intends to reissue the notice shortly. The March 23 notice makes drastic changes in Section 117 eligibility and uses of funds that are inconsistent with the existing program regulations in 34 CFR Part 410. The eligible applicant pool would be expanded to include tribally-controlled community colleges for the first time and the uses of the funds would be restricted.

If put into place, these changes could result in closure of the two institutions that have depended on this funding for their core operations. The Perkins funds support the ongoing operations of UTTC and CIT, just as funding under the Tribally Controlled Colleges and Universities Act supports the ongoing operations of tribal colleges. We ask that you not reissue the notice regarding Section 117 but rather engage in a formal rulemaking process. Pending that, the FY 2001 Perkins funds should be issued under the current regulations.

We view the March 23 notice as an end-run around the regulatory process; it is, in effect, a set of new regulations without the benefit of any formal process or consultation with the affected parties. The 1998 amendments to the Perkins Act were signed into law on October 31, 1998—almost two-and-a-half years ago—and no regulations have been issued. Now the Department asserts that the 1998 amendments “substantially revised” the tribally controlled postsecondary institutions program and wants to waive the regulatory process on the grounds that there is no time to issue regulations if the awards under Section 117 are to be made in a timely manner. This is disingenuous and certainly not in keeping with the federal government’s policy of working with tribes on a government-to-government basis, including consultation with tribes and tribal organizations on policy matters that will affect them.

Again, we urge you to direct that the March 23 grant announcement not be re-issued but rather use the existing regulations for Tribally Controlled Postsecondary Vocational Institutions for this grant period. If the Department feels that new regulations are warranted for the 1998 Perkins Act Amendments, such regulations should be issued through the Administrative Procedures Act in consultation with the affected tribal parties.

We appreciate your attention to this important matter.

Sincerely,

KENT CONRAD,  
PETE DOMENICI,  
BYRON L. DORGAN,  
JEFF BINGAMAN,  
U.S. Senate.  
EARL POMEROY,

TOM UDALL,  
U.S. House of Representatives.

AMERICAN INDIAN  
HIGHER EDUCATION CONSORTIUM,  
Alexandria, VA, March 27, 2001.

Mr. ROBERT MULLER,  
Deputy Assistant Secretary (Acting), Office of  
Vocational and Adult Education, Department  
of Education, Washington, DC.

DEAR MR. MULLER: On behalf of the 32 Tribal Colleges and Universities, I am writing to request your assistance with a serious matter involving our two tribally-controlled postsecondary vocational institutions, United Tribes Technical College (UTTC) and Crowpoint Institute of Technology (CIT). It has come to my attention that your office is about to publish a solicitation opening up eligibility requirements for Title I, Sec. 117; therefore, significantly changing the intent of the program. It is of great concern that no consultation has been done with our institutions on this matter. To make this change would seriously jeopardize the funding for UTTC and CIT’s core operations and force their closure.

Because of the immense ramifications of this action, we strongly urge you to hold the solicitation to be published March 28, 2002. We also request that appropriate consultation occur with AIHEC, UTTC, and CIT as soon as possible so that this matter can be resolved constructively and expeditiously.

It is important to note the value of these two institutions and their historic role in providing vocational education opportunities to American Indian students. UTTC and CIT were founded because of limited access to opportunities in vocational education in serving their respective tribal communities. However, because these two institutions are vocational in nature and did not meet the eligibility requirements of the Tribally Controlled College Assistance Act for core operational support, Sec. 117 was created by AIHEC’s advocacy efforts on their behalf.

Thank you for your immediate attention and consideration. We look forward to your response. I can be reached at [REDACTED]/cell or [REDACTED] until March 29th.

Respectively,  
DR. JAMES SHANLEY,  
President.

#### GUN SHOW BACKGROUND CHECK ACT

Mr. LEVIN. Mr. President, this week I joined Senator REED and a number of my colleagues in introducing the Gun Show Background Check Act, which would close the gun show loophole. If enacted, prospective buyers at gun shows would be required to undergo Brady background checks to ensure that they are not felons, fugitives, domestic abusers, or other persons prohibited from purchasing firearms.

It is incredible to me that more than two years after Columbine, lawmakers have not yet acted to reduce the availability of guns to criminals and other prohibited persons by closing this loophole in our federal firearm laws. Just a few days ago, America memorialized the worst school shooting in our nation’s history. On April 20, two years ago, Eric Harris and Dylan Klebold brought terror to Columbine High School. Of the four guns used by the two Columbine shooters, three were acquired at a gun show. The teenage shooters took full advantage of the gun

show loophole, which allowed their friend, Robyn Anderson, to buy them two rifles and a shotgun without ever submitting to a background check. Later, Robyn Anderson testified about her experience to the Colorado Legislature. She said:

While we were walking around [at the gun show], Eric and Dylan kept asking sellers if they were private or licensed. They wanted to buy their guns from someone who was private—and not licensed—because there would be no paperwork or background check.

I was not asked any questions at all. There was no background check . . . I would not have bought a gun for Eric and Dylan if I had had to give any personal information or submit any kind of check at all.

I wish a law requiring background checks had been in effect at the time . . . It was too easy. I wish it had been more difficult. I wouldn’t have helped them buy the guns if I had faced a background check.

Of all the testimony that came out of Columbine, Robyn Anderson’s is among the most memorable. The citizens of Colorado and Oregon, States with high rates of gun ownership, reacted by supporting referenda to close the gun show loopholes in their States. Now, Congress should do the same and enact legislation to close the gun show loophole nationwide.

#### CAMPAIGN FINANCE

Mr. BIDEN. Mr. President, I rise to call my colleagues’ attention to an article by the distinguished First Amendment scholar, Ronald Dworkin, “Free Speech And The Dimensions Of Democracy.” The article appears in *If Buckley Fell: A First Amendment Blueprint for Regulating Money in Politics*, sponsored by the Brennan Center for Justice at New York University’s School of Law.

Professor Dworkin’s work illustrates a point some of us made during the recent debate on campaign finance reform: the shocking state of our current political life is a perversion of the public discourse envisioned by the Founding Fathers, a perversion directly rooted in the mistaken understanding of the First Amendment underlying the Supreme Court’s decision in *Buckley v. Valeo*, 424 U.S. 1 (1976).

As Professor Dworkin puts it, “[o]ur politics are a disgrace and money is the root of the problem.”

There is no need to detail the disgraceful state of our political life brought about by politicians’ need to chase dollars. Members of this body, myself included, described the current state of affairs in all its painful and embarrassing detail during the recently concluded debate on campaign finance reform.

Professor Dworkin’s article makes explicit what many of us have argued in supporting Senator HOLLINGS’ proposal to amend the Constitution so that reasonable limits can be placed on campaign expenditures: Senator HOLLINGS’ Amendment is not an affront to the First Amendment, as some have

portrayed it; it is an affront to Buckley, which was wrongly decided. Senator HOLLINGS' Amendment is restorative: it returns First Amendment jurisprudence to what it was before the ill-conceived Buckley decision.

In holding that limitations on campaign expenditures violate the First Amendment, Buckley mistakenly equates money and speech. But, as Justice Stevens pointed out recently in *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377 (2000), money is not speech; money is property.

Professor Dworkin's article shows that the mistaken factual premise in Buckley is rooted in a fundamental misconception of First Amendment jurisprudence. Senator HOLLINGS' effort to make clear that reasonable limits can be imposed constitutionally on campaign expenditures would restore that jurisprudence by overturning Buckley.

The First Amendment and most of the important decisions interpreting it presuppose a democracy in which citizens are politically equal, not only as judges of the political process through voting, but also as participants in that process through informed political discourse. Reasonable regulations on campaign expenditures would enhance speech and contribute to a more rational political discourse. Professor Dworkin illustrates this point through a historical and philosophical analysis of First Amendment precedent and the threat that unrestricted campaign expenditures pose to the values underlying the First Amendment. Treating money as speech debases genuine democratic dialogue.

Justice Brandeis made this point in another way in his justly famous dissent in *Whitney v. California*, 274 U.S. 357, 375 (1927):

Those who won our independence believed that the final end of the state was to make men free to develop their faculties, and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty; . . . [They believed] that the greatest menace to freedom is an inert people; that public discourse is a political duty; and that this should be a fundamental principle of the American government.

The damage that unrestricted campaign expenditures has done to our public discourse is clear. If money is speech, then inevitably one will need money, and large amounts of it, to speak politically. The result, in Professor Dworkin's words, is that our last two presidential campaigns were "as much a parody of democracy as democracy itself."

I will not repeat Professor Dworkin's analysis of the legal precedents interpreting the First Amendment and Buckley's distortion of them, except to point to the oddity that Buckley at times recognizes the constitutional jurisprudence it undermines. It does so in holding that, in contrast to campaign expenditures where any limit purport-

edly violates the First Amendment, Congress may constitutionally place limits on campaign contributions. The latter holding, as Professor Dworkin points out, is premised on a principle deeply rooted in First Amendment jurisprudence: reasonable restrictions on activity in the political realm, like contributing money, may be erected to protect core First Amendment values, like equality of political discourse. That is all that most proponents of campaign reform want to do, and that is all that the Hollings Amendment will do.

#### AMERICAN PRISONERS OF THE HOLOCAUST

Mr. HOLLINGS. Mr. President, in September of 1944, the 106th Infantry Division embarked for Europe and soon joined heavy fighting at the Battle of the Bulge. But one member of the division, the Academy Award-winning filmmaker Charles Guggenheim, was left behind in Indiana due to a minor illness. His connection with this brave group and the 350 American soldiers taken prisoner after the battle and sent to a Nazi camp in Berga, Germany led Mr. Guggenheim to undertake a new documentary, which is the subject of an excellent New York Times article by Roger Cohen. So that more Americans can be educated about the events leading up to the Holocaust and the unspeakable horrors inflicted upon Americans as well as Europeans, I ask that Mr. Cohen's article be printed in the RECORD.

The article follows:

[From the New York Times, Apr. 17, 2001]

WHERE G.I.'S WERE CONSUMED BY THE HOLOCAUST'S TERROR; A FILMMAKER HELPS THAW MEMORIES OF WARTIME GUILT

(By Roger Cohen)

BERGA, Germany. Four plain wooden crosses stand in the cemetery above this quiet town in eastern Germany. One of them is inscribed "Unknown Allied Soldier." He is unlikely to be an American, because the G.I.'s who died here were exhumed after World War II and taken home. But the mystery of this soldier's identity is only one of many hanging over Berga and its former Nazi camp.

On a cold, late March day, with snow falling on the graves, a thin, soft-spoken American stands filming in the cemetery. He has hired some local volunteers, one of whom is portraying a Nazi guard, as two others turn the earth in preparation for the burial of the simulated corpses whose limp feet dangle out of sacks. The scene has an eerie luminosity in the silence of the snow.

The weather is cinematographically perfect. It is also unseasonably cold and infernally damp. The American, Charles Guggenheim, shivers as he says: "This is a slow business, filming something like this. Sort of like watching grass grow."

But for him the fate of the American soldiers imprisoned and worked to death more than a half-century ago in Berga has become something of an obsession.

Time may be needed for an obsession to take hold, time for the half-thoughts, nagging regrets and suppressed memories to coalesce into a determination to act. Mr. Guggenheim, a documentary filmmaker who

has won four Academy Awards, waited a long time to embark on this movie. His daughter, Grace Guggenheim, has a theory as to why. "This is sort of a survivor's guilt story," she said.

In September 1944 Mr. Guggenheim, now 77, was with the American 106th Infantry Division, preparing to go to Europe. But when the other soldiers embarked, he was immobilized with a foot infection. He remained in Indiana while his fellow infantrymen were plunged, within weeks, into the Battle of the Bulge; two regiments were lost. Thousands of American soldiers were captured, and several hundred who were Jewish or who "looked" Jewish ended up in Berga. Up to now their fate has received relatively little attention, partly because the surviving soldiers long tended to repress the trauma.

"I could have been among the captured or the killed," Mr. Guggenheim mused. "I never wished I had come to Europe. Anyone in the infantry who wishes for war has something wrong with them. But I've thought a lot: why in the hell am I here and they not? Perhaps in the next life they'll get even. I'm trying not to believe in a next life."

Even this life seems incredible enough when gazing at little Berga, a place outside time. It was exploited by the Nazis before being taken over by the Russians, who mined uranium in the area. In 1990 it was made part of a united Germany.

Unemployment here stands at about 24 percent, so Mr. Guggenheim had no problem finding volunteers for his film. To conjure an atmosphere of desolation was not difficult either: beside the unused red-brick textile factory of a vanished Jewish family (named Englander), stray cats wander through junkyards, watched by old men standing huddled against the cold. Germany's ghosts, its myriad secrets, are almost palpable in a place like this.

Among the onlookers near the cemetery is Sabine Knuppel, a municipal worker. She says she has photographs of the "old days" in Berga: a lighted swastika glowing among trees heavy with snow. None of the old people in town like to talk about those days, she says, when the Nazis set up a satellite camp to Buchenwald in the middle of town and used the slave laborers imprisoned there to dig tunnels into the rock cliffs bordering the Elster River.

All that, she continues, constitutes a "lost world." But once there were perhaps 1,000 prisoners working in the tunnels, where the Nazis planned to install a factory producing synthetic fuel. But until now, nobody in the town knew there were Americans among the prisoners, Ms. Knuppel says.

After the war the Russians blew up many of the tunnels. In their vestiges bats established a vast colony now officially designated as a German nature reserve. Along the wooded banks of the Elster, a dozen entrances to the tunnels may still be seen; they are barred with steel doors.

Layer upon layer of German secrets: more tangible in a place like Berga than in the west of the country, where postwar prosperity wiped away most traces of tragedy. Mr. Guggenheim, whose award-winning documentaries include "J. F. K. Remembered" and an account of the civil rights movement called "A Time for Justice," has been digging into the secrets for two years now. He has interviewed 40 American survivors of Berga for a documentary tentatively titled "G.I. Holocaust."

The film, a co-production of Mr. Guggenheim's company and WNET, the public-television station in New York, centers on what happened to a group of American soldiers captured by the Germans after the Battle of the Bulge (which began on Dec. 16, 1944) and later transported to Berga.