

BUSING FOR SCHOOL DESEGREGATION

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ISSUE DEFINITION

The mandatory transportation of school children to desegregate public elementary and secondary schools is an issue of deep contention throughout our society. The House of Representatives has approved language for the Department of Justice FY82 authorization bill (H.R. 3462) restricting the Department's involvement in actions requiring school busing. On Mar. 2, 1982, the Senate approved its version of the Department of Justice FY82 authorization bill (S. 951) with language restricting the Justice Department's involvement in busing actions as well as imposing limits on the busing plans Federal courts can impose. S. 951 was then sent to the House for consideration. Hearings on S. 951 before a House Judiciary subcommittee began on June 17, 1982.

The Supreme Court, on June 30, 1982, issued two rulings concerning voter initiatives limiting busing in two States. One was upheld; the other struck down.

BACKGROUND AND POLICY ANALYSIS

Mandatory busing of school children is a controversial tool used to desegregate public elementary and secondary schools. The debate over mandatory busing has raised questions about appropriate ways to achieve equal educational opportunity in this country. This issue brief explores the controversy in four sections. The first section reviews the action to date of the 97th Congress on busing legislation, as well as the action of the executive and judicial branches regarding busing. The second section presents an overview of the busing issue, including references to relevant Supreme Court decisions. The third section considers Federal legislative activity in this area. Finally, the fourth section provides some of the major arguments made for and against the use of busing to remedy school segregation.

RECENT BUSING ACTIVITY

1. 97th Congress

As has been the case in all recent past Congresses, proposals to limit or terminate the use of transportation in remedying school segregation have been made in the 97th Congress. Indeed, both Houses of Congress have passed anti-busing amendments. On June 9, 1981, the House approved the "Collins" amendment (named for its sponsor, Representative James Collins) to the Department of Justice Appropriation Authorization Act, Fiscal Year 1982 (H.R. 3462), prohibiting the Department from using any funds authorized by the Act "to bring any sort of action to require directly or indirectly the transportation of any student to a school other than the school which is nearest the student's home, except for a student requiring special education as a result of being mentally or physically handicapped." H.R. 3462 was passed by the House on June 9, and has not been considered by the Senate.

On Mar. 2, 1982, the Senate passed its version of the FY82 Department of Justice authorization act (S. 951) with three anti-busing amendments. One of

these, the "Helms" amendment (named for its sponsor, Senator Helms) is identical to the "Collins" amendment except it adds the words "or maintain" after the word "bring."

The second of these amendments, the "Johnston" amendment (named for its sponsor Senator Johnston), places time and distance limits on the transportation that Federal courts can order for public school students. The amendment provides that no Federal court can order the transportation of a student to a public school other than the one nearest the student's home unless the student is attending a particular school voluntarily, or the requirement is "reasonable." The requirement would not be "reasonable" under specified circumstances, including if the time consumed in travel to and from school for a particular student exceeded 30 minutes a day or if the distance traveled to and from school exceeded 10 miles a day. These time and distance limits would not apply to attendance at the school nearest the student's residence that had the student's appropriate grade level. The amendment also provides that upon receipt of a "meritorious" complaint by a student or his parent that the student is being transported in violation of the amendment, and after determining that the complainant is unable to pursue litigation, the Attorney General is authorized to initiate a civil action to obtain relief. Transportation in violation of the amendment is defined as that occurring under Federal court orders entered before or after enactment of the amendment. The amendment also provides that it is to be cited as the "Neighborhood School Act of 1982." It is similar to S. 528 introduced by Senator Johnston and to H.R. 2047 introduced by Representative Moore.

Finally, a third anti-busing amendment to S. 951 as passed by the Senate provides that none of the provisions of S. 951 are to prevent the Justice Department from participating in proceedings to end or reduce busing in existing court-ordered plans.

Senate consideration of the "Johnston" and "Helms" amendments was long and intense. Debate on S. 951 began in the Senate on June 16, 1981. After failing on four occasions to invoke cloture on a filibuster waged against the anti-busing language, the Senate invoked cloture on Sept. 16, 1981 on an amendment containing both the "Helms" and "Johnston" amendments. On Dec. 10, 1981, cloture was once again invoked, this time to end a filibuster against the "Helms" amendment. (The "Helms" amendment was first introduced and then modified by the addition of the "Johnston" amendment. Although the Senate approved the combined "Johnston-Helms" amendment, it also in turn had to approve the original amendment as modified.) The Senate approved the original amendment as modified on Feb. 4, 1982. On Feb. 9, 1982, the Senate invoked cloture on the entire bill, limiting further debate to not more than 100 hours. On Feb. 24, 1982, the Senate rejected an amendment to S. 951 establishing a right to racially neutral assignment to public schools (similar to S. 1147). On Mar. 2, 1982, the Senate approved the third anti-busing amendment permitting the Justice Department to participate in proceedings to limit busing in existing court orders. On Mar. 2, 1982, the Senate passed S. 951 as amended.

S. 951, following Senate passage, was sent to the House for consideration, reportedly because efforts to seek a conference with the House to resolve differences between each chamber's version of the FY82 Justice authorization act would have been debatable on the Senate floor, and the resulting conference might have been stalemated. Several members of the House introduced resolutions to have the bill considered on the House floor (see Legislation section below) in response to reports that the bill would be held at the Speaker's table. On Mar. 22, 1982, the bill was referred to the House

Judiciary Committee. A motion was presented to the Clerk of the House on May 25, 1982, to discharge the House Judiciary Committee from further consideration of S. 951. On June 17, 1982, the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice began a series of hearings on the anti-busing provisions of S. 951.

Debate in the Congress over the anti-busing language of S. 951 has focused on the constitutionality of these provisions, particularly the "Johnston" amendment which affects a remedy available to the Federal courts. Among the points being debated are the authority under which the Congress could affect the jurisdiction of, and remedies available to, Federal courts, the requirements of the Brown v. Board of Education decision in 1954 (see discussion in Overview section below) and whether busing is necessary to uphold certain constitutional rights. In a letter (May 6, 1982) to Representative Rodino, chairman of the House Judiciary Committee, Attorney General William French Smith concluded that the anti-busing provisions of S. 951 were constitutional. For an analysis of the Johnston and Helms amendments see Legal Analysis of the Helms Amendment No. 96 to S. 951, The 1982 Department of Justice Authorizations Act, Regarding the Enforcement Authority of the Department in School Desegregation Cases by Charles V. Dale, CRS American Law Division, Aug. 31, 1981; and Legal Analysis of the Helms Amendment No. 69, as modified, to S. 951, the 1982 Department of Justice Authorizations Act, Regarding the Transportation of Students by Charles Dale, CRS American Law Division, July 2, 1981.

2. Executive and Judicial Branches

Recent Justice Department activity on school desegregation reflects Attorney General Smith's announcement (in a speech on May 22, 1981 before the American Law Institute) that:

Rather than continuing to insist in court that the only and best remedy for unconstitutional segregation is pupil reassignment through busing, the Department of Justice will henceforward propose remedies that have the best chance of both improving the quality of education in the schools and promoting desegregation.

The Department has proposed that a metropolitan-wide plan of voluntary busing be implemented for St. Louis, Missouri. The key feature of this proposal is the offering of free State public college attendance as an incentive for black students who voluntarily transfer from city schools to white suburban schools, and for white students who voluntarily transfer from suburban schools to black city schools. The Justice Department has also joined with the Caddo Parish (Louisiana) School Board in filing a consent decree in Federal court to end a 16-year-old desegregation suit. The proposed plan includes establishment of magnet schools, a laboratory school operated with institutions of higher education, majority to minority transfer, attendance zone and grade restructuring, etc.

The United States Supreme Court issued two rulings on June 30, 1982, concerning voter initiatives limiting busing in two States. The Court struck down Initiative 350, adopted by a majority of the voters in the State of Washington, which would have limited the authority and ability of local school districts to assign students on the basis of race. Among the three

districts potentially most affected by the initiative is Seattle which has a school desegregation plan, voluntarily adopted by its school board, that includes mandatory busing. In the opinion of the Court, Initiative 350 was unconstitutional because "it uses the racial nature of an issue to define the governmental decisionmaking structure, and thus imposes substantial and unique burdens on racial minorities." (Washington v. Seattle School District No. 1)

In its second ruling, the Court upheld Proposition I, an amendment to the California constitution which applies the standards of the 14th Amendment of the U.S. Constitution to the use of student transportation and assignment remedies for equal protection violations in California. The proposition requires a finding of de jure segregation before remedial transportation and assignment can be ordered. Its adoption, upheld by the California State Supreme Court, enabled the Los Angeles School Board to end a 3-year-old program of State court-ordered busing. The U.S. Supreme Court concluded, in part, that striking down the proposition would prevent States that exceed the standards of the 14th Amendment from ever reverting to those standards. The Court stated, "Proposition I does not inhibit enforcement of any federal law or constitutional requirement. Quite the contrary, by its plain language the Proposition seeks only to embrace the requirements of the Federal Constitution with respect to mandatory school assignments and transportation. It would be paradoxical to conclude that by adopting the Equal Protection Clause of the Fourteenth Amendment, the voters of the State thereby had violated it." The Court concluded, "Nor can it be said that Proposition I distorts the political process for racial reasons or that it allocates governmental or judicial power on the basis of a discriminatory principle." (Crawford v. Los Angeles Board of Education)

OVERVIEW

In 1954, the U.S. Supreme Court rendered its landmark decision in Brown v. Board of Education (347 U.S. 483) which found segregated educational facilities to deprive children of the equal protection of the laws under the 14th amendment to the constitution.

Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

De jure (by law) segregation by race in education was thus found to be unconstitutional. As developed in subsequent Supreme Court decisions, de jure segregation is not limited to segregation resulting from specific statutes, but includes segregation resulting from school officials' actions that have segregative intentions behind them. Since 1954, efforts to end de jure school segregation have been undertaken with varying degrees of intensity and success.

The role of school busing in addressing de jure segregation is decidedly controversial. On the one hand, busing might achieve desegregated school attendance patterns promptly and thus assist local school officials in meeting their constitutional obligations. On the other hand, the extent and depth of the opposition to busing has generated concern over the state of

race relations in this country, raised doubts about the possibility of truly desegregating schools and challenged the principle that equal educational opportunity demands school desegregation.

In 1971, the Supreme Court addressed student transportation in the desegregation of a dual school system (Swann v. Charlotte-Mecklenburg, 402 U.S. 1). The Court held out as the constitutional requirement for such districts the elimination of "all vestiges of state-imposed segregation" present in the public schools.

All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation.

In these circumstances, "desegregation plans cannot be limited to the walk-in school." The Court found no basis for rejecting the busing of students as part of the desegregation plan. But, "an objection to transportation of students may have validity when the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process."

Later Supreme Court decisions have addressed issues relevant to the debate over school busing. In Keyes v. School District No. 1 (413 U.S. 189, 1973), the Court defined de jure segregation as including that segregation resulting from intentional school board policies, even if, as in this case involving Denver, Colorado, the district had never segregated by statute. Keyes helped move the busing controversy out of the South and into the rest of the Nation. The question of a segregation remedy involving more than one school district has been addressed by the Court, principally in Milliken v. Bradley (418 U.S. 717, 1974). While rejecting a multi-district or metropolitan remedy for Detroit, Michigan, the Court established that such remedies are valid only if the State or school districts involved helped cause interdistrict segregation. This decision is relevant to the busing controversy because it has been argued that interdistrict remedies could involve a greater amount of busing, in part because the total area to be desegregated would be larger. In some instances, though, less busing might be required because, by crossing district lines, grouped or paired schools might be closer together.

In summary, the Court has since the 1954 Brown decision identified mandatory school busing as an acceptable tool to remedy de jure segregation. Desegregation techniques have come to be approved only when they actually would and could desegregate, rather than simply offering the opportunity for desegregation to take place voluntarily (such as with freedom of choice plans). Although the use of busing has limits in the eyes of the Court, these limits have not been precisely defined.

Reliable national statistics on the extent to which public school children are bused for desegregation purposes are not available. The total number of miles traveled, the time spent on the buses, the incurred costs, etc., are not known. National figures on the total number of students riding buses to school, whether or not such transportation is required under a desegregation order or plan, show that of the 38 million public school students (average daily attendance) over 22 million, or 58%, were transported in 1979-80 at public expense. The estimated average annual cost per student in 1978-79 was \$147. The percentage of students being transported and the costs per student

have risen almost without exception for each of the past 50 years. It is not known to what extent increases experienced in the late 1960s and 1970s, when busing for desegregation was instituted on a significant scale, can be attributed to the desegregation of schools. Some would argue that an important reason for these increases is the long-standing trend of school district consolidation. The number of school districts has dropped from nearly 128,000 in 1931-32 to 16,000 in 1975-77. Since 1967-68, the number of districts has dropped by over 25%. Another possible cause is the rapid growth of suburban areas, where students may live at some distance from their schools.

Busing of students is not the only tool that has been used in attempts to desegregate school systems. Other techniques can be grouped by whether they rely on voluntary responses from students and parents or whether they are mandatory. Voluntary techniques can be part of mandated desegregation plans. Also, busing is a necessary component of some of the techniques described below.

Voluntary techniques include the following:

- open enrollment plans (also known as "freedom of choice" plans -- students can attend the school they and their parents choose);
- majority to minority transfers (students of majority race at one school are permitted to transfer to schools where they will be in the minority);
- magnet schools (schools are established with special programs and curricula designed to attract students of all races from throughout a school system).

Mandatory techniques include the following:

- neighborhood attendance policies (students attend the schools in their neighborhoods or those closest to their homes, rather than being required to attend more distant segregated schools);
- redrawn attendance zones (schools' grade structures remain intact but the zones from which they draw students are adjusted);
- paired or grouped schools (schools predominantly serving different races are assigned the same attendance zones but each school serves a different cluster of grade levels)*;
- modified feeder patterns (lower schools of predominantly different races serve as feeder schools to the same upper level school);

-- new school construction (the selection of construction sites is influenced by desegregation concerns).

*[NOTE: If, for example, two elementary schools had student bodies of predominantly different races and served different attendance zones, these schools could be paired and desegregated by creating a single zone encompassing the previous zones served by the schools, and by assigning grades 1-3 to one school and grades 4-6 to the other. Clustering of schools is an extension of this technique to more than two schools.]

Not all of the techniques listed above have fared equally well under judicial scrutiny. Presently, desegregation plans for districts practicing de jure segregation or still evincing the vestiges of such school segregation are not likely to survive judicial challenge if they are based on freedom of choice plans or neighborhood attendance policies.

FEDERAL LEGISLATION AND BUSING

Federal laws address the busing of school children for desegregation in three ways. First, the Civil Rights Act of 1964 provides legislative authority upon which, in part, many busing orders and plans have been based. Second, some legislation provides financial support for desegregating school districts. Third, legislation has been enacted to limit the use of school busing as a remedy for segregation.

A decade after the Brown decision, the Civil Rights Act of 1964 (P.L. 88-352) was enacted. Section 601 of title VI of the Act provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Section 602 specifies the steps that Federal executive agencies may take to secure compliance with section 601. Title IV of the Act authorizes assistance to desegregating districts. Such assistance may be in the form of (1) technical assistance in the development and implementation of desegregation plans, (2) training institutes for elementary and secondary school personnel to help them "deal effectively with special education problems occasioned by desegregation," and (3) grants to school boards for the provision of in-service training for school personnel to address desegregation problems and for employing specialists to provide advice on desegregation problems. The funding level for this program for the 1982-83 period is \$24 million (down from \$37 million in FY81).

In addition, section 407 of the Civil Rights Act authorizes the Attorney General, under specific circumstances, to initiate a civil action against school boards accused of depriving individuals of the equal protection of the law. According to the statute, nothing in the section is to empower any official or court of the United States to order the transportation of

students to achieve a racial balance in school systems. This has been interpreted as not applying to systems practicing de jure segregation.

Title VII of the Education Amendments of 1972 (P.L. 92-318) established the Emergency School Aid Act, to assist communities undergoing desegregation. The predecessor to this act, the Emergency School Aid Program, had been established under discretionary authority of the Commissioner of Education in 1970. The impetus for these programs were Supreme Court decisions which, in the 1970s, confronted many school districts with the problem of prompt implementation of desegregation plans.

Under the provisions of the Emergency School Aid Act, desegregating school districts were eligible for Federal financial assistance. A number of different types of grants were available for activities such as staff training, hiring of additional staff, developing new curricula, and support for community relations activities. FY81 funding (used in 1981-82) was \$149 million (down from \$249 million in FY80). The Emergency School Aid Act is subsumed in an education block grant under provisions of the Omnibus Budget Reconciliation Act of 1981. The current statutory authority is repealed effective Oct. 1, 1982. States and localities may carry out activities under the block grant similar to the activities currently funded under the program. (For further information on consolidation of education programs see IB79021.)

Title VIII of the Education Amendments of 1972 established a prohibition against the use of Federal education funds to transport students or teachers (or to purchase equipment necessary to do so) in efforts to overcome a racial imbalance in a school system or to carry out a desegregation plan, except if voluntarily requested by local school officials.

The Education Amendments of 1974 (P.L. 93-380) added the prohibition against the use of Federal education funds for busing to the General Education Provisions Act as section 420. The exception for voluntary requests by local school officials was deleted. In addition, the general prohibition was not to apply to certain funds under the Impact Aid Program (School Assistance in Federally Affected Areas, P.L. 81-815 and P.L. 81-874).

Title II (Equal Educational Opportunities Act of 1974) of the Education Amendments of 1974 imposed a restriction on Federal desegregation busing requirements.

No court, department, or agency of the United States shall, . . . , order the implementation of a plan that would require the transportation of any student to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student. (Section 215)

This provision did little to limit the activity of courts because section 204(b) stated that no provision of the title was to affect the authority of Federal courts to enforce the 5th and 14th amendments to the constitution. In addition, the terms "appropriate grade level and type of education" could be defined as permitting busing beyond the nearest schools. Thus, DHEW continued to use the authority of title VI of the Civil Rights Act to condition continuation of Federal funding on compliance with the title even if that required transportation beyond students' nearest schools.

Other provisions of this title established a priority list of

desegregation remedies, stated that school district boundaries are not to be ignored in fashioning desegregation remedies unless such boundaries were created to segregate, and limited the imposition of new busing plans until the start of a school year.

In the mid-1970s, Congress began to limit the authority of the DHEW and the new Department of Education to require desegregation plans that include busing as a condition for the continuation of Federal funding. Title VI of the Civil Rights Act authorized the termination of Federal funding for failure to comply with its requirements (see earlier discussion of this title).

The FY76 and FY77 Labor-HEW Appropriations Acts (P.L. 94-206 and P.L. 94-439, respectively) contained language (known as the "Byrd" amendment) prohibiting the use of appropriated funds to require, directly or indirectly, the busing of students to any school other than the one nearest their home and offering the appropriate course of study.

In 1977, a new amendment (known as the "Eagleton-Biden" amendment) was adopted limiting the use of FY78 Labor-HEW funding for school busing (P.L. 95-205). Building on the earlier "Byrd" amendment, it responded to an interpretation of that previous amendment by DHEW and the Department of Justice that permitted the pairing or clustering of schools for pupil assignment purposes. Language regarding the appropriate course of study was dropped; and prohibited indirect busing requirements were defined as including clustering, pairing or grade restructuring. This amendment has been applied to all subsequent DHEW and Department of Education funding. The "Eagleton-Biden" amendment reads as follows:

None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home, except for a student requiring special education, to the school offering such special education, in order to comply with title VI of the Civil Rights Act of 1964. For the purpose of this section an indirect requirement of transportation of students includes the transportation of students to carry out a plan involving the reorganization of the grade structure of schools, the pairing of schools, or the clustering of schools, or any combination of grade restructuring, pairing, or clustering. The prohibition described in this section does not include the establishment of magnet schools.

The 96th Congress considered two major legislative proposals: (1) H.J.Res. 74, proposing a constitutional amendment to prohibit mandatory school busing (which failed to receive the requisite two-thirds vote in the House on July 24, 1979), and (2) a rider to the Departments of State, Justice and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1981 (H.R. 7584) prohibiting the Department of Justice from bringing action to require, directly or indirectly, the busing of any student to a school other than the one nearest the student's home (which was vetoed by President Carter on Dec. 13, 1980).

ARGUMENTS FOR AND AGAINST BUSING

This section, through presentation of arguments for and against busing, highlights some of the complex issues that spark much of the current busing controversy. The arguments are those that might be offered by proponents and opponents of the use of busing to desegregate.

A. Arguments Often Made by Proponents of Busing

(1) Busing is, in most cases, the only remedy that can successfully desegregate schools. Desegregated housing that would permit neighborhood school assignments is unlikely to be a reality in the near future. Indeed, some would argue that desegregated schools are a prerequisite for the achievement of residential desegregation.

(2) The furor over busing is out of all proportion to the amount of busing that actually takes place. One estimate, reported by the U.S. Commission on Civil Rights, places the percentage of students being bused for desegregation at less than 7% of all students riding buses. The majority of all public school children ride buses to school, but only a small fraction are bused to desegregate.

(3) The academic achievement of black students generally improves in desegregated classrooms, and that of white students rarely suffers. The academic risks involved in busing are minimal and the possible gains are significant.

(4) Although the movement of white students out of desegregating school systems ("white flight") may be exacerbated by busing, busing is not the cause of this flight and the increase is only temporary. A recent study by the Center for National Policy Review at Catholic University suggests that extensive busing plans covering large areas may actually lead to greater school and neighborhood desegregation, reducing over time the necessity to bus children.

(5) At its heart, the opposition to busing is largely racist in nature and reflects opposition to desegregation of this country's schools. Attacks on school busing merely mask this more fundamental position. Busing to maintain segregated schools elicited no public outcry that the bus ride itself might in some way be harmful to the children. Only when the bus ride ended at desegregated schools has there been opposition to busing per se.

B. Arguments Often Made by Opponents of Busing

(1) The polarizing effects of busing plans and their requisite expense deflect attention, energy and resources from critically important efforts to improve the educational quality of the schools. By fragmenting communities, by destroying neighborhood schools, by alienating parents who might have been involved in the schools, etc., busing plans attack some of the natural elements necessary for creating and maintaining quality schools. In addition, many parents oppose busing because their children are forced into schools that are unable to meet their academic and cultural needs. Equal

educational opportunity has little positive meaning if the overall quality of schools is allowed to decline.

(2) Public opinion polls have shown substantial opposition to school busing for desegregation. At the same time, support for desegregated schooling has been growing. The opposition to busing is, thus, focused on the means being used, not the end to be achieved.

(3) The costs, not only the financial ones, of busing for desegregation appear far in excess of any educational gains experienced by black students. The record is confused about the actual impact of desegregated schooling on black achievement. Desegregated schooling is not necessary for black students' achievement.

(4) The busing of students for desegregation can generate "white flight," ironically leading to resegregation of the school systems. Although the movement of white students from desegregating school systems may have a wide variety of causes, the implementation of a busing plan markedly increases this outward flow.

(5) Busing is no longer being used to desegregate schools; rather it is being used to bring about racial balance in the schools. As a result, the shifting of students to satisfy numerical racial quotas dominates other, more important, concerns such as the potentially negative impact of long-distance bus rides on childrens' health and educational progress, and the degree to which the segregation being remedied can be attributed to things beyond the control of school officials, such as housing patterns.

LEGISLATION

Presented below is a selection of the bills and resolutions introduced during the 97th Congress which address the issue of school busing for desegregation. These bills were selected to show the variety of proposals that have been made on this issue. It should be noted that in the House a certain type of proposal predominates -- that of precluding United States (Federal) courts from directing pupil assignment, generally on certain bases, including race. As is shown below, this approach is pursued through free-standing legislation (such as H.R. 1180), through amendment to existing legislation (such as H.R. 327), and through amendment to the Constitution (such as H.J.Res. 56). As the various House bills and resolutions listed below show, even among bills and resolutions adopting much the same approach, there may be some important remaining differences. For example, compare H.J.Res. 56 with H.J.Res. 91, both intended to affect court jurisdiction through a constitutional amendment. The latter resolution directs its coverage to court action to achieve a racial or ethnic balance. As was shown earlier in this brief, such language has a particular meaning for courts likely to limit the impact of this resolution.

H.R. 327 (Holt)

Amends title IV of the Civil Rights Act of 1964 to prohibit any court of the United States or any Federal official from compelling the assignment of teachers or students to particular schools, classes or courses for reasons of race, religion, sex or national origin. Federal funding could not be conditioned upon such assignment. Introduced Jan. 5, 1981; referred to Committee on Judiciary.

H.R. 340 (Holt)

Neighborhood School Act. Provides that no court of the United States would have the jurisdiction to make any decision, enter any judgement, or issue any order having the effect of requiring assignment of pupils to a school on the basis of race, color, religion, or national origin. Federal funding could not be conditioned upon such assignment. Introduced Jan. 5, 1981; referred to Committees on Judiciary, and Education and Labor.

H.R. 761 (McDonald)

Provides that no court of the United States would have jurisdiction to make a decision or issue an order having the effect of requiring a student to attend a particular school. Introduced Jan. 6, 1981; referred to Committee on Judiciary.

H.R. 869 (Crane)

Amends title 28 (Judicial Administration) of the United States Code providing that the Supreme Court would not have jurisdiction to review any case arising out of any State statute, ordinance, rule, regulation or any interpreting act, which relates to assignment of a student to a public school on the basis of race, creed, color or sex. Federal district courts would not have jurisdiction of any case or question which the Supreme Court could not review under provisions of this bill. This legislation would not apply to any case pending in a court of the United States on the date of its enactment. Introduced Jan. 16, 1981; referred to Committee on Judiciary. Hearings held June 3, July 16 and 23, 1981.

H.R. 1180 (Ashbrook)

Provides that no court of the United States would have jurisdiction to require the attendance of a student at a school because of race, color, creed or sex. Introduced Jan. 22, 1981; referred to Committee on Judiciary. Identical to H.R. 1079 (Hinson) and H.R. 3332 (Gaydos). Hearings held June 3, July 16 and 23, 1981.

H.R. 3462 (Rodino)

Department of Justice Appropriation Authorization Act, Fiscal Year 1982. Authorizes appropriations for Justice Department activities. On June 9, 1981, the House approved an amendment restricting the Department's involvement in any action requiring school busing. Introduced May 6, 1981; referred to Committee on Judiciary. Reported to the House May 19, 1981. Amended and passed by the House June 9, 1981.

H.J.Res. 16 (Ashbrook)

Proposes an amendment, entitled "Freedom from Force," to the Constitution providing that no public school student could be assigned to a school on the basis of race, creed or color; nor could any public school teacher or public employee of the United States, a State or political subdivision of a State, be assigned to work at a particular job or particular place because of race, creed or color. Introduced Jan. 5, 1981; referred to Committee on Judiciary.

H.J.Res. 46 (Holt)

Amends the Constitution providing that no public school student could be

assigned to a school on the basis of race, creed or color. Congress would be empowered to enforce this article through legislation. Introduced Jan. 5, 1981; referred to Committee on Judiciary.

H.J.Res. 56 (Mottl)

Proposes an amendment to the Constitution prohibiting courts of the United States from requiring a person's assignment to, or exclusion from, any school on the basis of race, religion or national origin. Introduced Jan. 5, 1981; referred to Committee on Judiciary.

H.J.Res. 91 (Volkmer)

Amends the Constitution to prohibit the Supreme Court or any inferior court established by the Congress from requiring, in order to achieve a racial or ethnic balance in public schools, the attendance of a student at a school because of race, color, creed or sex. Introduced Jan. 19, 1981; referred to Committee on Judiciary.

H.Res. 385 (Young of Missouri)

Provides for the consideration of S. 951, specifying that upon adoption of the resolution it shall be in order for the House to resolve itself into the Committee of the Whole for such consideration. At the conclusion of the consideration of the bill for amendment, the Committee is to rise and report the bill as amended to the House for final passage. Introduced Mar. 10, 1982; referred to Committee on Rules.

H.Res. 387 (Moore, for himself and others)

Provides for the consideration of S. 951, specifying that upon adoption of the resolution, it shall be in order to take the bill from the Speaker's table for consideration by the House. Introduced Mar. 11, 1982; referred to Committee on Rules.

S. 528 (Johnston, for himself et al.)

Neighborhood School Act of 1981. Establishes certain limits on the extent to which students can be transported beyond the school nearest their residence under orders of a court of the United States. School bus travel beyond the nearest school could not add more than 30 minutes (roundtrip) to the time the student spent on the bus, nor add more than 10 miles (roundtrip) to the distance traveled by the student. Transportation or assignment for attendance at a magnet or other specialized school, for an educational purpose or for voluntary attendance at a particular school would not be covered by these limitations. In addition, the Attorney General would be authorized, under certain circumstances, to initiate civil action upon receipt of a complaint from a student or parent that a violation of the Neighborhood School Act has occurred. Introduced Feb. 24, 1981; referred to Committee on Judiciary. Hearing held on May 22, 1981 (see Chronology). Identical to H.R. 2047 (Moore),

S. 951 (Thurmond)

Department of Justice Appropriation Authorization Act, Fiscal Year 1982. Authorizes appropriations for Justice Department activities. Pending is an amendment limiting the Department's involvement in busing suits and imposing limits on Federal court orders involving busing. Introduced Apr. 8, 1981;

referred to Committee on Judiciary. Reported to Senate May 15, 1981. Subsequent legislative activity described in Background section above and in Chronology section below (see entry for 06/16/81).

S. 1005 (Helms)

Student Freedom of Choice Act. Amends the Civil Rights Act of 1964 by adding a new title XII (Public School -- Freedom of Choice). The bill defines a "freedom of choice system" as one under which the schools and classes of a school system are open to students of all races. Parents can choose any of the public schools and classes that are available to students of their child's age and educational standing. If a school board operates a "freedom of choice system," the Federal Government would not be able to withhold, or threaten to withhold, funding because of the racial composition of the student body in any school or classroom in that system. Nor could Federal funding be conditioned upon transportation of students or closing of schools intended to alter the student body's racial composition. In addition, transfer of faculty members to alter the racial composition of faculty could not be required. Civil actions against the United States would be authorized to be brought by school boards, students, parents or faculty members if the provisions of this title are violated. Finally, the bill would prohibit any court of the United States from taking action to change the racial composition of the student body in any public school or class, or change the racial composition of the faculty, in systems where students are assigned according to "freedom of choice." Introduced Apr. 27, 1981; referred to Committee on Judiciary.

S. 1147 (Gorton)

Racially Neutral School Assignment Act. Establishes that students have a right to be free from purposeful segregation and discrimination by school authorities in school assignment; and that, because the use of racially conscious school assignment practices is not necessary or appropriate to uphold that right, students also have a right to racially neutral assignment of schools. The bill would prohibit any court, department or agency of the United States or of any State from requiring assignment of any student, on the basis of race or color, to any school beyond the one nearest the student's home providing the appropriate grade level and education. Individuals aggrieved by violations of this act would be authorized to bring civil action in United States district courts; and the Attorney General would be authorized to bring court action as well. The bill also would amend the Equal Educational Opportunity Act of 1974 (Title II of the Education Amendments of 1974), to remove language in that act specifying that none of its provisions could affect the authority of the United States courts to enforce the 5th and 14th Amendments. The provisions of this bill would apply to any order of a court, department or agency of the United States or of any State issued before or after enactment of the bill. Introduced May 8, 1981; referred to Committee on Judiciary. Hearing held on May 22, 1981 (see Chronology).

S. 1647 (East)

Neighborhood School Transportation Relief Act of 1981. As amended and approved by the Senate Judiciary Subcommittee on the Separation of Powers, the bill prohibits lower Federal courts from (1) requiring the assignment or transportation of any public school student in order to alter the racial or ethnic composition of the student body at any public school, (2) requiring the closing of any public school, or (3) precluding any State or local

educational agency from fulfilling the terms of any contract that specifies the school assignment of any faculty or administration member. Previously entered orders by Federal courts requiring assignment or transportation to alter schools' racial or ethnic composition, or the closing of schools to alter the enrollment composition of any schools will be dissolved by application of affected State or local educational agencies. Introduced Sept. 21, 1981; referred to Committee on Judiciary. Hearings conducted by Subcommittee on the Separation of Powers Sept. 30, and Oct. 1, 1981. Amended and approved by the Senate Judiciary Subcommittee on the Separation of Powers on Nov. 17, 1981. Identical when introduced to S. 1743 (Helms), introduced on Oct. 15, 1981.

S. 1760 (Hatch)

Public School Civil Rights Act of 1981. Prohibits lower Federal courts from having jurisdiction to issue any order requiring the assignment or transportation of public elementary and secondary students on the basis of race, color or national origin, or to issue any order excluding students from attending a public school on the same bases. Individuals, school boards and other school authorities affected by court orders that were entered prior to the date of this Act and that would not have been permitted under the terms of this Act are entitled to relief from such orders, unless four specific findings are made. First, the acts prompting the original orders intentionally and specifically caused, and would continue to intentionally cause, students to be assigned to, or excluded from, schools on the basis of race, color or national origin. Second, the "totality of circumstances" in the school systems remains unchanged, warranting no reconsideration of the orders. Third, no other remedy could prohibit the intentional and specific segregation. Fourth, the benefits of the orders outweigh their costs. The bill also provides a list of the remedies available for addressing unconstitutional segregation of students. These are: legal injunctions against implementation of any segregative law or governmental action, contempt of court proceedings if the injunctions are not obeyed, voluntary transfer programs, advance planning in the construction of new school facilities, and local initiatives and plans to improve education without regard to race, color or national origin. Introduced Oct. 21, 1981; referred to Judiciary Committee. Approved by the Senate Judiciary Subcommittee on the Constitution Nov. 3, 1981.

HEARINGS

U.S. Congress. House. Committee on the Judiciary. School desegregation. Hearings, 97th Congress, 1st session. Sept. 17, 21, 23, Oct. 7, 14, 19, 21, 29, Nov. 4 and 19, 1981. Serial no. 26. Washington, U.S. Govt. Print. Off., 1982. 1048 p.

REPORTS AND CONGRESSIONAL DOCUMENTS

U.S. Congress. House. Committee on the Judiciary. School desegregation; report of the Subcommittee on Civil and Constitutional Rights. March 1982. Washington, U.S. Govt. Print. Off., 1982. 32 p.

At head of title: 97th Congress, 2d session. Committee print no. 12.

CHRONOLOGY OF EVENTS

- 06/30/82 -- Supreme Court upheld California's anti-busing initiative and struck down Washington State's anti-busing initiative.
- 06/17/82 -- Opening of hearings on S. 951 before the House Subcommittee on Courts, Civil Liberties and the Administration of Justice.
- 05/25/82 -- A petition was filed to discharge the House Judiciary Committee from further consideration of S. 951.
- 05/06/82 -- Attorney General informed Congress that anti-busing provisions of S. 951 appeared to be constitutional.
- 03/22/82 -- Supreme Court heard oral arguments in busing cases involving anti-busing initiatives in Washington and California.
- 03/22/82 -- S. 951 referred to House Judiciary Committee for consideration.
- 03/02/82 -- Senate passed S. 951 (57-37), FY82 Department of Justice authorization bill. See entry below of 06/16/81 for discussion of Senate action.
- 11/17/81 -- Senate Judiciary Subcommittee on the Separation of Powers approved S. 1647.
- 11/03/81 -- Senate Judiciary Subcommittee on the Constitution approved S. 1760.
- 09/30/81 -- Senate Judiciary Subcommittee on the Separation of Powers began a series of hearings on S. 1647.
- 09/17/81 -- House Judiciary Subcommittee on Civil and Constitutional Rights began a series of hearings on school desegregation.
- 06/16/81 -- Debate began in the Senate on the Department of Justice Appropriation Authorization Act, Fiscal Year 1982 (S. 951). An amendment restricting the Department's involvement in busing suits and imposing limits on Federal court orders involving busing was approved by the Senate on Sept. 16, 1981. On June 19, 1981, the Senate rejected an amendment stating that nothing in the Act could limit the Department's or Federal courts' ability to uphold the Constitution. On July 10, July 13, July 29 and Sept. 10, the Senate failed to approve cloture motions to end a filibuster against the anti-busing amendment. Cloture was invoked on Sept. 16, 1981. The amendment approved on Sept. 16 was a modification of a previously offered amendment. On Dec. 10, 1981, cloture was invoked to end a filibuster against the

original amendment as modified. The original amendment as modified was approved on Feb. 4, 1982. Cloture was invoked on Feb. 9, limiting further debate on S. 951 to not more than 100 hours. On Feb. 24, 1982, the Senate rejected an amendment establishing a right to racially neutral assignments to public schools. On Mar. 2, 1982, the Senate adopted language permitting the Justice Department to participate in proceedings to limit busing in existing court-ordered plans. S. 951 was passed on Mar. 2 by a vote of 57-37. It was then sent to the House for consideration.

- 06/09/81 -- House approved amendment (265 to 122) to the Department of Justice Appropriation Authorization Act, Fiscal Year 1982 (H.R. 3452) restricting the Justice Department's involvement in actions requiring school busing.
- 06/03/81 -- Senate Judiciary Subcommittee on the Constitution held the second in a series of hearings on "The 14th Amendment and School Busing."
- 06/03/81 -- House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice held a hearing on "Legislation to Limit the Jurisdiction of the Federal Courts." Testimony before the subcommittee touched on bills to limit Federal court jurisdiction over cases involving student assignment.
- 05/22/81 -- Senate Judiciary Subcommittee on Separation of Powers held a hearing on "Forced School Busing." Testimony on S. 528 and S. 1147 was heard.
- 05/14/81 -- Senate Judiciary Subcommittee on the Constitution held the first in a series of hearings on "The 14th Amendment and School Busing."
- 12/13/80 -- President Carter vetoed the Departments of State, Justice and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1981 (H.R. 7584) which prohibited the Department of Justice from using its funding to initiate litigation to require busing any student to a school other than the one nearest his home.
- 07/24/79 -- H.J.Res. 74, proposing a constitutional amendment to prohibit mandatory school busing, failed to receive the requisite two-thirds vote in the House.
- 07/02/79 -- Columbus Board of Education v. Penick decision (443 U.S. 449) and Dayton Board of Education v. Brinkman (Dayton II) decision (443 U.S. 526) rendered by the Supreme Court. Impact of earlier Dayton I decision was limited by these 1979 decisions upholding districtwide busing plans.

- 07/18/78 -- Brown v. Callifano decision (455 F. Supp. 837) was rendered by Federal District Court upholding constitutionality of "Eagleton-Biden amendment." Decision was affirmed on appeal.
- 12/09/77 -- "Eagleton-Biden amendment" was first added to appropriations legislation for the Department of Health, Education and Welfare (P.L. 95-205). Amendment prohibited use of funds to require busing of students to schools beyond ones nearest homes.
- 05/27/77 -- Dayton Board of Education v. Brinkman (Dayton I) decision (433 U.S. 406) was rendered by the Supreme Court. It appeared to increase the burden of demonstrating segregative intent by school officials, and to limit extent of appropriate remedies.
- 01/28/76 -- "Byrd amendment" was first added to appropriations legislation for the Department of HEW (P.L. 94-206) prohibiting use of funds to require busing of students beyond ones nearest students' homes offering appropriate courses of study.
- 08/21/74 -- Education Amendments of 1974 (P.L. 93-380) amended General Education Provisions Act to prohibit use of Federal education funds for costs of busing for desegregation; and enacted Equal Educational Opportunity Act restricting Federal courts or agencies from ordering plans to transport students for desegregation beyond next closest schools to homes (includes language providing that no provision is to affect Federal courts' enforcement of the 5th and 14th amendments).
- 07/25/74 -- Milliken v. Bradley decision (418 U.S. 717) was rendered by the Supreme Court limiting metropolitanwide desegregation plans.
- 06/21/73 -- Keys v. School District No. 1 decision (413 U.S. 189) was rendered by the Supreme Court extending definition of de jure segregation to include systems intentionally segregating even if not by statute.
- 06/23/72 -- Education Amendments of 1972 (P.L. 92-318) established prohibition against use of Federal education funds for costs of busing for desegregation and provided specific legislative authority for the Emergency School Aid program.
- 04/20/71 -- Swann v. Charlotte-Mecklenburg decision (402 U.S. 1) was rendered by the Supreme Court approving busing as a desegregation tool in efforts to remove all vestiges of de jure segregation.
- 08/18/70 -- Appropriations were made under P.L. 91-380 to fund the Emergency School Aid program providing assistance to desegregating districts.

- 05/27/68 -- Green v. County Board of Education decision (391 U.S. 430) was rendered by the Supreme Court requiring school officials "to come forward with a [desegregation] plan that promises realistically to work, and promises to work now."
- 07/02/64 -- Civil Rights Act of 1964 (P.L. 88-352) was enacted. Section 601 prohibits discrimination on the ground of race, color or national origin in any program receiving Federal financial assistance.
- 05/31/55 -- Brown v. Board of Education (Brown II) decision (349 U.S. 294) was rendered by the Supreme Court requiring school districts operating dual systems to "make a prompt and reasonable start toward full compliance" and to act with "all deliberate speed."
- 05/17/54 -- Brown v. Board of Education (Brown I) decision (347 U.S. 483) was rendered by the Supreme Court. Segregation in education is declared unconstitutional.

ADDITIONAL REFERENCE SOURCES

- U.S. Library of Congress. Congressional Research Service.
Busing for school desegregation: The debate on selected issues [by] Jim Stedman. Paper. Apr. 30, 1981.
- The Consolidation of the Emergency School Aid Act -- a brief analysis of its impact [by] Jim Stedman. June 16, 1982.
CRS paper.
- A legislative history of Federal anti-busing legislation: 1964-1981 [by] Charles V. Dale. Oct. 5, 1981.
CRS paper.
- Metropolitan school desegregation [by] K. Forbis Jordan and Charles V. Dale. Washington, December 1980.
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