Issue Brief

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BUSING FOR SCHOOL DESEGREGATION

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BY

James B. Stedman

Education and Public Welfare Division

Congressional Research Service

ISSUE DEFINITION

The mandatory transportation of school children to desegregate public elementary and secondary schools is a controversial issue in this country. By law, Federal education funds cannot be used to meet the costs of transporting students or staff for desegregation purposes, and the Department of Education cannot require busing as a condition of the receipt of Federal funds. Efforts have been made in recent Congresses to impose new restrictions on busing, such as limiting the busing plans courts could order, or prohibiting the Justice Department from being involved in actions requiring busing. The most extensive debate on these proposals occurred during the 97th Congress when each House approved one or both of them, but neither proposal was enacted. The 98th Congress took little action on these proposals, although it did approve legislation to authorize financial assistance to desegregating school districts (P.L. 98-377).

BACKGROUND AND POLICY ANALYSIS

The mandatory reassignment and transportation of school children is a controversial tool used to desegregate public elementary and secondary schools. The debate over mandatory busing, as it is called, 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 briefly reviews the action of the 97th and 98th Congresses, as well as recent action of the executive and judicial branches regarding busing. The second section presents an overview of the busing issue, including references to the most relevant Supreme Court decisions. The third section is a consideration of past 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 FEDERAL ACTIVITY

1. 97th and 98th Congresses

As has been the case in all recent Congresses, proposals to limit or terminate the use of mandatory reassignment and transportation in remedying school segregation were made in the 97th and 98th Congresses.

During the 97th Congress, both Houses passed new anti-busing amendments, none of which were enacted into law. The House twice approved the so-called "Collins" amendment (named for its sponsor, Representative James Collins), prohibiting the Justice Department from using any of its funds to bring actions requiring the use of busing. The amendment was added to the FY82 Justice Department authorization bill (H.R. 3462) on June 9, 1981, and to the FY83 Justice Department appropriation bill (H.R. 6957) on Dec. 9, 1982. The Senate, on Mar. 2, 1982, passed its version of the FY82 Justice Department authorization bill (S. 951) with three anti-busing amendments. One of these, the "Helms" amendments (named for its sponsor, Senator Jesse Helms) was similar to the "Collins" amendment. The second of these amendments, the "Johnston" amendment (named for its sponsor, Senator J. Bennett Johnston), would have placed time and distance limits on the transportation that Federal courts could order for public school students. The third amendment provided

that none of the provisions of S. 951 was to prevent the Justice Department from participating in proceedings to end or reduce busing in existing court-ordered plans. None of these amendments was enacted into law.

Legislation was introduced in the 98th Congress to limit busing. On Oct. 21, 1983, during consideration of the H.R. 3222 (Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations, 1984), Senator Helms offered an amendment prohibiting the Justice Department from bringing or maintaining any action requiring busing of students beyond the schools nearest their homes. Although a motion to table the amendment was defeated (52-29), Senator Helms withdrew the amendment. The Senate Subcommittee on the Constitution approved S. 139, the Public School Civil Rights Act of 1983, limiting the jurisdiction of lower Federal courts over school assignment based on race. The House and Senate approved legislation (P.L. 98-377) to authorize assistance for desegregating school districts. This issue is discussed more fully below in the "Federal Legislation and Busing" section.

Finally, during debate on H.J.Res. 648, making continuing appropriations for FY85, the Senate considered an amendment, offered by Senator Baker for Senator Hatch, that would have set time and distance limits on student assignment plans U.S. courts could order. The amendment fell when the amendment to which it was an amendment was tabled.

2. Recent Executive and Judicial Branch Action

The Reagan Administration in recent years has argued against the mandatory reassignment of pupils to remedy unconstitutional segregation in schools and, instead, sought the implementation of voluntary measures in an effort to address violations and improve educational quality. Assistant Attorney General William Bradford Reynolds has asserted that "strategically placed and carefully selected magnet school programs, together with other enhanced curriculum opportunities" constitute "an exciting, new remedial approach in school cases that promises to accomplish meaningful desegregation of a public school system" and assure "quality education." (Remarks to Conference of Indiana Civil and Human Rights Commissions, June 7, 1984, emphasis deleted.) (For a definition of "magnet schools" see the Overview Section below.) In congressional testimony in 1981, Reynolds declared: "Deliberately providing a lower level of educational services to identifiably minority schools is as invidious as deliberate racial segregation. . . . Our future enforcement policies will be aimed at detecting and correcting any such constitutional violations wherever they occur." (Testimony before the House Subcommittee on Civil and Constitutional Rights, 97th COngress, 1st Session, Nov. 19, 1981.) Action by the Justice Department relevant to those policies is highlighted below.

In November 1982 the Justice Department filed a brief in support of the Nashville, Tennessee school system's request to the Supreme Court that it review a court of appeals decision. The court of appeals struck down parts of a plan that would have reassigned children in grades K-4 to their neighborhood schools, and that would have permitted enrollments in secondary schools to reach 85% of one race. The Justice Department urged review because, as it argued in its brief, the court of appeals misinterpreted the Supreme Court's Swann decision by holding the Nashville system to too strict a racial mix in its schools, and by ignoring the educational, social and financial costs of the mandatory busing required to achieve that mix. (See

description of Swann in "Overview" section below.) However, on Jan. 24, 1983, the Supreme Court refused to hear the case.

The Justice Department, on Aug. 6, 1982, requested that the Court of Appeals for the Fifth Circuit defer consideration of an appeal of the desegregation plan previously ordered by a Federal district court for the East Baton Rouge, Louisiana school district. After the request was granted, the Justice Department submitted an alternative desegregation plan to the district court. That plan, prepared by Christine Rossell of Boston University, would have replaced the current mandatory reassignment plan with one based on magnet schools and majority to minority transfers. (For definition of these terms, see the "Overview" section below.) The Justice Department, in papers filed with the district court, argued that an alternative to the mandatory plan was necessary given the extent of white enrollment losses apparently attributable to the desegregation plan. The school board in mid-February 1983 voted to reject the Justice Department's plan as too costly and involving excessive amounts of busing.

In early 1984, the Justice Department settled two school desegration suits by entering into consent decrees with the Bakersfield, California, and Lima, Ohio, school districts. The decrees commit the districts to create magnet schools and establish majority-to-minority transfer plans.

Late in 1984, the Justice Department filed a brief in the U.S. Court of Appeals in support of a district court ruling that Norfolk, Virginia, could end its elementary school busing plan and use neighborhood assignment instead. The Justice Department argued that, despite some anticipated increases in racial concentration among schools, the return to neighborhood assignment would address the flight of white enrollment from the public schools. According to the Justice Department, the system was declared desegregated by the courts in 1975 and should be free to fashion its own assignment plan without court direction. The district court has found that the neighborhood plan was not racially motivated.

The Justice Department has been engaged in litigation concerning a consent decree to desegregate Chicago's public schools. The plan developed by the Chicago school board under the decree relies on voluntary desegregation measures. A U.S. district court interpreted that decree as committing the Federal Government to finance a portion of the costs of desegregating the system. The Justice Department argued against that interpretation and challenged findings by the court that Department of Education funds are "available" for meeting the desegregation costs in Chicago. The U.S. Court of Appeals ruled on Sept. 9, 1983, that the U.S. had a substantial obligation under the decree to provide such assistance. In October 1983, the Congress appropriated $20 million for Chicago, prompting the District Court to release certain FY83 Department of Education funds that had been "frozen" pending resolution of the litigation. The district court also "froze" certain FY84 Department of Education funds. Although the district court at the beginning of June 1984 issued an opinion that the Federal Government should provide approximately $104 million to Chicago for the 1984-85 school year, that opinion was overturned on Sept. 26, 1984, by the Court of Appeals, which noted that the Department of Education was to give Chicago priority in the distribution of current funds available for desegregation. The case was remanded to the lower court for determination of whether Chicago is receiving the maximum level of Federal funding available.

In September 1985, Assistant Attorney General Reynolds stated that the Justice Department was investigating whether some schools were deliberately

lowering curricular standards to increase minority graduation rates. This effort was apparently part of the Justice Department's scrutiny of the allocation of resources to minority schools announced by Reynolds in 1981. For this most recent effort, Reynolds asserted that the Department of Justice and Education, working together, would play a role in securing remedies. (Los Angeles Times, Sept. 20, 1985.) In subsequent media reports, it was stated that neither former Secretary of Education Bell nor current Secretary Bennett had knowledge of the 4-year old investigation effort. (Education Week, October 2, 1985.)

Action by the Supreme Court related to school desegregation, particularly busing, is highlighted by decisions in 1982. The 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 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), approximately 22 million were transported in 1979-80 at public expense. The estimated average annual cost per student in 1979-80 was over $175. 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 15,000 in 1976-77. 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); and

-- 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); and

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

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* 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, but not to meet the costs of busing. 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 1984-85 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.

Beginning in 1968 with their addition to the FY69 appropriations bill for the Department of Health, Education and Welfare (HEW), the "Whitten" amendments (named for their original sponsor, Representative Jamie Whitten) that preclude the Department from using its funds to require districts to assign students to any particular school in de facto segregation cases have been added to every HEW or Department of Education Appropriations Act since.

Title VII of the Education Amendments of 1972 (P.L. 92-318) established the Emergency School Aid Act, to provide assistance to 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, support for community relations activities, and development of magnet schools. This was the major source of Federal aid to districts implementing school desegregation plans. FY81 funding (used in 1981-82) was $149 million (down from $249 million in FY80). The Emergency School Aid Act was subsumed in an education block grant under provisions of the Omnibus Budget Reconciliation Act of 1981. Its statutory authority was repealed effective Oct. 1, 1982. States and localities may carry out activities under the block grant similar to the activities previously funded under the program. Concern that the allocation of funds under the block grant precludes many urban school districts from maintaining their desegregation programs (some of which are court-ordered) prompted action in the 98th Congress on legislation to reestablish the Emergency School Aid Act. On June 7, 1983, the House passed H.R. 2207, a bill that would have reestablished the Emergency School Aid Act in a modified form. H.R. 1310 (Education for Economic Security Act), as approved by both the House and Senate and signed into law (P.L. 98-377), includes a title authorizing assistance to desegregation related magnet schools. An appropriation of $75 million was enacted by the 98th Congress. The Administration's request for a rescission of these funds was not agreed to by the Congress. [For further information on this issue, see CRS Issue Brief 83094, Emergency School Aid Act: Desegregation Aid Considered by the 98th Congress.]

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). It should be noted that a rider to appropriations bills in the past several years has prohibited the spending of all education program funds to meet the costs of busing.

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.

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 children's 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 99th Congress which address the issue of school busing for desegregation.

H.R. 81 (Crane)
Amends the United States Code to preclude Supreme Court jurisdiction over any case concerning State statutes, ordinances, rules, or regulations related to student assignment to public schools on the basis of race, creed, color, or sex. Seeks to limit district court jurisdiction in such cases as well. Introduced Jan. 3, 1985; referred to Committee on the Judiciary.

H.R. 527 (Robinson)
School District Consolidation Amendments of 1985. Provides that consolidation of school districts is to be the last desegregation remedy employed by United States district courts; that the court ordering such consolidation is to determine the amount of necessary and reasonable expenses involved in such consolidation; and that the Secretary of the Treasury is to pay (using any funds in the Treasury not otherwise appropriated) that amount to any involved school district. Introduced Jan. 7, 1985; referred to Committee on the Judiciary. Hearings held July 25, 1985.

H.R. 1211 (Gaydos)
Provides that no United States Court is to have jurisdiction to require the attendance of a student at a particular school on the basis of race, creed, color, or sex. Introduced Feb. 21, 1985; referred to Committee on the Judiciary.

H.J.Res. 14 (Bennett)
Proposes an amendment to the Constitution prohibiting compulsory attendance at a public school other than the one nearest the student's residence. Introduced Jan. 3, 1985; referred to Committee on the Judiciary.

H.J.Res. 53 (Emerson)
Proposes an amendment to the Constitution prohibiting compulsory attendance at a public school other than the one nearest the student's residence, located within the school district in which the student resides and offering the course of study pursued by the student. Introduced Jan. 3, 1985; referred to Committee on the Judiciary.

S. 37 (Hatch, Thurmond)
Public School Civil Rights Act of 1985. Provides that no lower Federal court shall have jurisdiction to order the assignment or transportation to any public school, or the exclusion from any public school, of any students on the basis of race, color, or national origin. Relief from previously entered orders requiring such assignment, transportation, or exclusion will be provided unless five conditions are met: the actions prompting the original court action would continue to cause pupil assignment on the basis of race, color, or national origin; the "totality of circumstances" in the school system remains unchanged from when the order was originally made; no other remedy could address the segregation in the system; the benefits of the order outweigh its costs; and the total daily time consumed in school bus travel does not exceed 30 minutes for any student, and such travel does not exceed a total of 10 miles unless such travel is to the school nearest the

student's residence. Introduced Jan. 3, 1985; referred to Committee on the Judiciary. Approved May 15, 1985, by the Subcommittee on the Constitution for full committee consideration.

HEARINGS

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

U.S. Congress. Senate. Committee on the Judiciary. Subcommittee on Separation of Powers. Court-Ordered School Busing. Hearings on S. 528, S. 1005, S. 1147, S. 1647, S. 1743, and S. 1760, 97th Congress, 1st session. May 22, Sept. 30, Oct. 1 and 16, 1981. Washington, U.S. Govt. Print. Off., 1982. 1082 p.
"Serial no. J-97-29"

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

08/11/84 -- H.R. 1310 was signed into law (P.L. 98-377).

07/25/84 -- House passed the Senate version of H.R. 1310 under suspension of rules.

06/27/84 -- Senate passed H.R. 1310 with a program authorizing aid for magnet schools.

03/08/84 -- Senate Subcommittee on the Constitution approved S. 139.

10/21/83 -- During consideration of the Justice Department appropriations bill (H.R. 3222), Senator Helms offered amendment to restrict Justice Department's involvement in busing cases. After a motion to table the amendment failed (52-29), Senator Helms withdrew the amendment.

06/07/83 -- House suspended rules and passed H.R. 2207, a bill to reestablish the Emergency School Aid Act.

06/30/82 -- Supreme Court upheld California's anti-busing initiative and struck down Washington State's anti-busing initiative.

05/06/82 -- Attorney General informed Congress that anti-busing provisions of S. 951 appeared to be constitutional.

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.

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. 3462) restricting the Justice Department's involvement in actions requiring 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. Califano 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.

06/27/77 -- 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.

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----- A legislative history of Federal anti-busing legislation: 1964-1981 [by] Charles V. Dale. Oct. 5, 1981. [Washington] 1981.

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