

United States Senate

WASHINGTON, D.C. 20510

March 25 1977

Dear Senator:

I plan to introduce the attached bill entitled the "Equal Educational Opportunities Amendments of 1977" which would amend the Educational Opportunities Act of 1974 to prohibit the courts from ordering the transportation of any student unless the court first determined that a racially discriminatory purpose was a motivating factor in the constitutional violation for which the transportation is proposed as a remedy.

The bill is predicated upon a series of decisions handed down by the Supreme Court, beginning in June of last year, in which the Court fashioned a new rule in racial discrimination cases. The basic rule which the Court first applied in the employment discrimination case of Washington v. Davis, 426 U.S. 229 (1976), the Arlington Heights v. Metropolitan Housing Corporation (Jan. 1977) housing case, and now seems prepared to apply to school cases, is that a court cannot impose a remedy for alleged discrimination based upon evidence of discriminatory effect alone. The Court now requires that there be a finding that "a discriminatory purpose was a motivating factor in the constitutional violation for which the remedy is proposed." In essence, the "Equal Educational Opportunities Amendments of 1977" would legislate this rule for busing cases.

My bill strikes at the heart of the injustice of court ordered busing. It prohibits the federal courts from disrupting our educational system in the name of the constitution where there is no evidence that the governmental officials intended to discriminate.

My bill is limited in several important respects. First, it is only directed at busing cases which are still in the courts and for which busing has not yet been ordered.

Second, the bill only goes as far as the Supreme Court seems to go. It only goes as far as the new "discriminatory purpose" rule recently enunciated by the Court. It only goes this far because, I believe, that except via a constitutional amendment, the Congress could not go beyond the rulings of the Supreme Court.

I believe there is a growing sentiment in the Congress to curb unnecessary busing. In September of 1975, the Senate passed my amendment to the HEW appropriations bill that prohibited HEW from ordering busing

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to achieve school integration. That was the first time the U.S. Senate took a firm stand in opposition to busing. The Supreme Court seems to have recognized that busing simply cannot be justified in cases where state and local officials intended no discrimination.

This legislation protects legitimate constitutional rights without permitting the extreme remedy of busing where it is not justified.

I have attached a list of questions and answers regarding this legislation for your perusal.

If you are interested in joining me as a cosponsor of this bill or desire any additional information, please contact me or Karen Adler and Gerry Doherty of my staff at 4-5042.

Sincerely,



Joseph R. Biden, Jr.
United States Senator