TABLE 4A.—NEGROES IN 100 LARGEST SCHOOL DISTRICTS BY GEOGRAPHIC AREA

[Number[1] and percentage attending school at increasing levels of isolation, fall 1968 elementary and secondary school survey]

Geographic area	Total number of students	Total number of Negro students	Percent of total students	Negro students attending minority schools: 0 to 49.9 percent		50 to 100 percent		95 to 100 percent		99 to 100 percent		100 percent	
				Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Continental United States	10,417,750	3,250,319	31.2	418,633	12.9	2,831,686	87.1	2,201,589	67.7	1,798,445	55.3	1,091,978	33.6
32 northern and western [3]	5,710,874	1,791,677	31.4	245,474	13.7	1,546,203	86.3	1,047,760	58.5	752,904	42.0	296,376	16.5
6 northern and western [3]	3,198,998	1,351,484	42.2	174,291	12.9	1,177,193	87.1	811,795	60.1	612,433	45.3	259,855	19.2
6 border and District of Columbia [4]	1,340,469	470,901	35.1	62,122	13.2	408,779	86.8	343,097	72.9	278,341	59.1	145,386	30.9
11 southern [5]	3,366,407	987,741	29.3	111,037	11.2	876,704	88.8	810,732	82.1	767,200	77.7	650,216	65.8
5 southern [6]	1,038,345	399,784	38.5	36,062	9.0	363,722	91.0	347,206	86.8	345,713	86.5	303,315	75.9

[1] Minute differences between sum of numbers and totals are due to computer rounding.
[2] Alaska, Arizona, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin, Wyoming.
[3] Illinois, Indiana, Michigan, New York, Ohio, Pennsylvania.
[4] Delaware, District of Columbia, Kentucky, Maryland, Missouri, Oklahoma, West Virginia.
[5] Alaska, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia.
[6] Alabama, Georgia, Louisiana, Mississippi, South Carolina.

TABLE 4B.—SPANISH SURNAMED AMERICANS IN 100 LARGEST SCHOOL DISTRICTS BY AREA OF SIGNIFICANT POPULATION

[Number[1] and percentage attending school at increasing levels of isolation fall, 1968 elementary and secondary school survey]

District	Total number of students	Total number of Spanish-American students	Percent of total students	Spanish-surnamed Americans attending minority schools: 0 to 49.9 percent		50 to 100 percent		80 to 100 percent		95 to 100 percent		100 percent	
				Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Continental United States	10,417,750	811,167	7.8	239,355	29.5	571,812	70.5	391,887	48.3	216,683	26.7	11,373	1.4
Arizona, California, Colorado, New Mexico, Texas (5)	2,343,277	416,029	17.8	139,584	33.6	276,445	66.4	190,101	45.7	108,063	26.0	5,393	1.3
Connecticut, Illinois, New Jersey, New York (4)	1,841,508	304,065	16.5	50,312	16.5	253,753	83.5	184,057	60.5	102,682	33.8	5,610	1.8
Florida (1)	937,053	49,431	5.3	23,447	47.4	25,984	52.6	9,350	18.9	3,146	6.4	160	.3
Other States and District of Columbia (39)	5,295,912	41,642	.8	26,012	62.5	15,630	37.5	8,379	20.1	2,792	6.7	210	.5

[1] Minute differences between sum of numbers and totals are due to computer rounding.

Mr. ELLENDER. Mr. President, I have a table furnished to the Appropriations Committee by HEW, indicating the number of students in five of the largest districts in the country during the fall term of 1968. Those districts are in New York, Los Angeles, Chicago, Detroit, and Philadelphia. The statement shows that there is a total enrollment of 2,878,224 students in those five largest U.S. school districts. The statement also shows that even though the total Negro enrollment constitutes 39.9 percent of the total enrollment in those districts, only 3.9 percent of the total enrollment is made up of Negro students attending majority white schools.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MONDALE. May I have 2 minutes?

Mr. MATHIAS. I yield 2 minutes to the Senator from Minnesota.

Mr. MONDALE. Permit me to say that if there is official discrimination in New York, the Court has jurisdiction to reach it and eliminate it. The Senator from Louisiana knows it is more than likely that those are figures which show residential patterns, which have not been found to be the result of official discrimination.

Mr. ELLENDER. Why does not Mr. Finch apply the same rules and regulations there that he does in the South?

Mr. MONDALE. The truth is that wherever there is official discrimination, in the North or the South, it must fall under the edict of the Supreme Court. If there is official discrimination in New York, it is illegal, and the same law will apply there as applies in Louisiana.

The problem is that in many of the States of the South there has been a longstanding tradition of separation of public schools on the basis of color. All the Supreme Court decisions have focused on the question of official discrimination. What we should do about de facto discrimination, or racial isolation arising from residential living patterns, is something that we hope to focus on in the Select Committee on Equal Educational Opportunity which the Senate created last week. The only point I make is that we are far from even coming close to eliminating official discrimination in the South, and I suspect there is more official discrimination in the North than we are generally aware of at this point.

I yield the floor.

Mr. STENNIS. Mr. President, will the Senator yield briefly to me, on my own time? I yield myself 3 minutes.

With reference to the number of Negroes in school districts, the 100 largest school districts, ranked by size, to which the Senator from Louisiana made reference, the official records show that none of those are from the South. They are all from the North. Furthermore, in one of my speeches, I referred to the five largest cities in the South as compared with the five largest school districts in the North, and the percentage of Negro children in predominately Negro schools ran almost parallel as between northern cities and southern cities. I can get those figures, but I do not have them here now.

My question is this: Did I understand the Senator correctly when he was giving the number of students that are in predominately black school districts? Did he say they were principally in the South? That is what I understood the Senator to say, that they were principally in the South.

Mr. MONDALE. What I said was that the policy of officially separating children into all black and all white schools is a practice that was followed principally, but not exclusively, in the South. That is what I said.

Mr. STENNIS. As I understood, the Senator said the districts were principally in the South. This is kind of customary language that has been used until these figures came out.

Does the Senator vigorously stand for the enforcement of the Federal law in States beyond the South to eradicate segregation? Does the Senator really stand for that vigorously? I think he does.

Mr. MONDALE. I thank the Senator from Mississippi. This debate has been going on for about 10 days. I am for the elimination of official discrimination wherever it is found, North or South. There is an effort to confuse the distinction between school systems which are organized on the basis of official discrimination and school systems, on the other hand, which are not, but have racial imbalance arising from residential living patterns.

The first is unconstitutional and illegal and prohibited by the Supreme Court. It is precisely that category—the illegal and unconstitutional category that the Whitten and Jonas amendments are designed to influence. It has

nothing to do with de facto segregation or racial isolation. It has nothing to do with perfectly legal, but nevertheless undesirable, patterns of racial isolation. This amendment is designed, just as some other amendments we have seen—to do one thing, to obstruct the enforcement of a constitutional right as declared repeatedly by the U.S. Supreme Court.

Mr. STENNIS. Mr. President, if the Senator would yield further to me, I want to ask him a specific question. He is an honest person and truthful. If the Senator believes in that, what is he going to do about New York State? I am not pointing to New York any more than others, but in New York they have passed a State law where, instead of getting ready for real integration, they are prohibiting it by law as far as they can. Would the Senator take a stand on that and make a suggestion to the Attorney General that he bring a suit to test that law and also put some of his men up there to scrupulously examine those districts and see whether or not there is any official act of gerrymandering the districts? Would the Senator vigorously stand for that?

Mr. MONDALE. I vigorously support a national effort to eliminate official discrimination wherever it is found, including in the city of New York, if it is there. There is no question about that. I could not uphold the oath I took when I became a U.S. Senator if I said constitutional rights applied in some places and not in others.

What we are involved in here is the question whether the Supreme Court orders which have repeatedly declared that official discrimination is illegal, shall be the law of this land, shall be followed and pursued by the agencies of this Government, or whether, because there is racial isolation——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. STENNIS. Mr. President, I yield myself 2 minutes.

Mr. MONDALE. Or whether a racial isolation problem in New York which has not been found to arise from unconstitutional acts—if that is the case—can be an excuse to delay the enforcement of the orders of the Supreme Court of the United States. That is the issue.

Mr. STENNIS. May I ask the Senator this? What does he propose be done about the District of Columbia? It is resegregated so that 95 percent are colored and 5 percent are white. What does he propose to do about that? Would he suggest importing children in from Maryland and Virginia? Would he do that?

Mr. MONDALE. That has nothing to do with the Whitten amendments, because they do not strike at de facto segregation. The reason why we established the Select Committee on Equal Educational Opportunity is to explore the kind of question the Senator raised, to determine what this country should do to deal with the problem of racial imbalance and racial isolation in situations which are perfectly legal under present law, but which may be undesirable as a matter of social policy.

The vice of the Whitten-Jonas amendments is that they would try to support activities that are perfectly illegal, and unconstitutional.

The PRESIDING OFFICER. The time of the Senator has again expired.

Who yields time?

Mr. MATHIAS. Mr. President, I yield 5 minutes to the Senator from New York.

Mr. JAVITS. Mr. President, I suppose we ought to be grateful for the advertisement. New York is very much in the forefront of the discussion. Fortunately, I am here, and I would like to address myself to the issue.

Mr. President, we are dealing with a problem which arises by virtue of the fact that de jure segregation—that is, segregation enforced by State and local law—is unconstitutional. Senators have argued, "If it is unconstitutional and therefore unlawful, it does not exist; so we are now on exactly the same basis as those areas where segregation of the races in the public schools exists, for whatever reason; and if you cannot reach them, you cannot reach us."

That is really the essence of the argument. We went through this at very great length in connection with the so-called Stennis amendment.

Mr. President, the invalidity of that argument is that if you applied that standard, you would simply assume legality in all cases, whatever may be the reason for the existence of the segregated situation.

The courts do not do that. It is no longer a matter of discretion for us. That has been decided very clearly. The courts have established the proposition that where you have had de jure segregation, and the conditions created by de jure segregation continue, they will assume that the de jure segregation must be eliminated by changing those conditions.

That also happens to correspond with sociological fact, because, interestingly enough, racial patterns in the South are very mixed. They are not clearly defined and separate, as they are in New York City and many other cities. In New York City, you have a number of sections which are heavily populated by blacks. The same condition exists in Chicago, in Baltimore, and in many other places.

However, in the South that is not the case, since the condition of segregation which is complained of has been brought about by law rather than residential patterns.

The courts have consistently held that those laws violate the Constitution which outlaws segregation resulting from State action.

Mr. President, in the North and in other areas, you have segregation brought about by residential patterns, heavily attributable to the injustices suffered by blacks in the South who have migrated, to the extent of almost half their number, within this century to the North Mr. President, they were forced out, and as a result have created tremendous demographic problems in Washington, D.C., New York, Chicago, and other places.

Mr. President, like the Senator from Minnesota (Mr. MONDALE), I am determined to do everything I humanly can, as a person, a citizen, and a legislator, to deal with the northern problem of residential segregation which is attributable to unlawful activities conducted with the purpose of denying Negroes equal opportunity in housing, which in turn is attributable, to economic and sociological reasons. I realize that in the main, that has got to be done by enforcing the fair housing laws, which in New York are very strong, and which are also on the Federal books; and I will do my utmost, as I believe every Senator will, to bring about their enforcement, to break up the segregated patterns, and give Negroes opportunities to move to the suburbs, if they so desire.

I also intend to use every bit of influence and weight I have to get appropriate State action, where educationally the black child is deprived because of the segregated pattern of his education.

Mr. President, this goes directly to the New York statute. The New York statute deals with busing children to correct racial imbalance, and the legislature prohibits such busing on educational grounds. There are no other State laws involved. For educational reasons, only elected boards of education may order busing.

I think that law is wrong, and I am doing and will do everything I can to fight it. But let us understand its limitations. It deals not with segregation grounded in law, but with segregation grounded in fact, something the Constitution cannot control. Also, it affects only four cities, and very shortly will not affect New York City, which is in the process of electing a board of education.

The PRESIDING OFFICER. The Senator's time has again expired.

Mr. MATHIAS. I yield the Senator 2 additional minutes.

Mr. MONDALE. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. MONDALE. Suppose there is a school district in the State of New York which, in fact, has a policy of official discrimination, and then suppose the Court orders busing to overcome that discrimination. Is it the Senator's impression that the State of New York, in passing that law, could frustrate the Supreme Court?

Mr. JAVITS. Not for a moment. But this amendment to the appropriation bill could, even if a court ordered it; and that is the biggest objection to the Whitten amendment. The fact is that we were very careful; even in the upsurge of feeling which existed in this Chamber on the Stennis and Ervin amendments, to recognize the power of the Court to enforce its decrees.

But here we take that power away, because if money cannot be used for that purpose, there will be no enforcement, even if there is a decree.

Mr. MONDALE. Will the Senator yield further?

Mr. JAVITS. I yield.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MATHIAS. I yield the Senator from New York 1 additional minute.

Mr. MONDALE. Would it not be fair to say that there are probably at least three layers of this problem that one

must look at? The first is the legal layer, eliminating unconstitutional discrimination. The second is the educational layer; What do you do to achieve good education, where there is racial isolation, even though it is not illegal? Third, there is the moral issue. What do you do about the morality of racial isolation?

If I am correct, is it not true that those who propose and support the Whitten and the Jonas amendments are dealing at the first level, with the legal question, and are trying to impair the power of the Supreme Court to enforce the law of the land.

The PRESIDING OFFICER. The Senator's time has again expired.

Mr. JAVITS. Just time to answer.

Mr. MATHIAS. I yield the Senator 1 additional minute.

Mr. JAVITS. I would say that, in my judgment, it cripples the ability to implement a court decree. It does that, and probably no more, because it can only do what will come within its purview. That will be the availability of money to implement a court decree, because the use of money otherwise is already provided for in the basic law, which provides it is not to be used for busing to correct racial imbalance. Since that is already in the law, there is no purpose for this special provision, unless we are really going to invade the power of the courts to deal with de jure segregation. That is the net effect. I am not going to deal with the question of motives, because one of the great virtues of this body is that we give every Senator credit for his motives.

The PRESIDING OFFICER. The time of the Senator from New York has expired.

Mr. MATHIAS. Mr. President, I yield an additional 2 minutes to the Senator from New York.

Mr. MONDALE. Mr. President, we who believe that the Supreme Court orders to eliminate official discrimination must be enforced have been offered as an answer that de facto segregation exists elsewhere, and that therefore until an undesirable local situation can be eliminated, we should not do anything about something that is both illegal and undesirable; thus we should not enforce the law until we can deal with a social problem of an entirely different nature.

It seems to me that to create such a situation or such a policy would destroy any meaningful enforcement under the decisions of the Supreme Court and the 14th amendment; it would insure that 2 million black children would continue to go to all-black schools in the South as a matter of official policy; and it would destroy basic rights guaranteed the 14th amendment.

Mr. JAVITS. I agree with the Senator from Minnesota. I think we have shown our good faith by joining to bring about the appointment of a select committee obligated to stand up and face the issue, even the issue of de facto segregation.

The Senator brought to the Senate what we feel is a mandate to seize the initiative and give the Senate the benefit of the greatest expertise we can muster. I know that the Senator and I intend to perform that obligation in the utmost good faith.

Mr. MATHIAS. Mr. President, I yield 3 minutes to the distinguished Senator from Kentucky.

Mr. COOPER. Section 408 denies the use of funds for certain activities, for busing students and for the assignment of any student to a particular school against the choice of his or her parents or parent.

Would the Senator say that these activities are hinged to the last clause of that statement—"to a particular school against the choice of his or her parents or parent?"

Mr. JAVITS. Yes. I think they intended to make that clause operative.

Mr. COOPER. Section 408, is then a freedom-of-choice amendment?

Mr. JAVITS. Essentially.

Mr. COOPER. It is the Senator's judgment, then, that the Green case, which decided that, while freedom of choice was not per se objectionable, if it resulted in segregation or maintained segregation, it was unlawful?

Mr. JAVITS. Exactly right. I think this case seeks to cancel out the effect of the Green case, by prohibiting us from using the means which would enable us to implement the decree in the Green case.

Mr. COOPER. I have my doubts about that for I would say that if this section should be tested and the courts followed the decision in the Green case, it would necessarily knock down the section and order HEW to provide funds.

Mr. JAVITS. I am not so sure about that, because I think we are sovereign in two areas: one is the provision of funds, or limitation on the use of funds and the other is the legislation of the jurisdiction of the courts. That is why the Ervin amendment, as presented, was so lethal—it sought to deprive the courts of their jurisdiction.

Our southern friends are astute lawyers. These are areas in which I think we are quite sovereign, and I doubt very much that a court could mandate HEW to use the money. I say that with all respect.

Mr. COOPER. My judgment is that if the courts should decide to enforce desegregation in certain school districts and section 408 was interposed, the court would hold it invalid, and HEW would have to provide the funds.

Mr. MATHIAS. Mr. President, will the Senator yield?

Mr. JAVITS. I yield

Mr. MATHIAS. Whether the Senator from New York is right or wrong in his conclusions as to the ultimate effect, I think the Senator from Kentucky, in his usual manner, has put his finger right on the sore point, that without the words of this amendment we are headed straight for a long, difficult, and unsettling period of litigation, which must be avoided.

Mr. JAVITS. We certainly can agree on that.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MATHIAS. I yield 2 additional minutes.

Mr. COOPER. My thought is that section 409 would run to confrontation with the Green case. I cannot vote for the section. The court has ruled upon the proposition of freedom of choice, attractive as it may sound.

I do not believe the courts have ever laid a clean and effective position in dealing with situations in the South which they class as de jure, while in the North, the same situations, are treated by the courts as de facto.

Mr. JAVITS. I need not protest again my respect for the Senator. I do not think the effect is the same.

Let us take an area like the District of Columbia. There simply is no alternative but to upgrade the level of education here. The fact is that the people are living here and that they are nonsegregated—to wit, practically all of them live here—and this does present us with a problem which is not susceptible of being reached by law. But where there is a condition of segregation which obviously is not based upon a residential pattern but is based on the artificiality of a decades-old system of required separation of the races, I do not think that without in any way condoning the former we need be inhibited in redressing the latter.

Mr. COOPER. I made a mistake. I said that I could not vote for the amendment. I meant that I could not vote for this section, because I think it flies in the face of the Court.

As to the District of Columbia situation, I believe the Senator may be wrong. I am not sure, but, as I recall, the schools in the District of Columbia were once segregated by law.

Mr. JAVITS. The Senator is correct.

Mr. COOPER. I think they may be under the rule applied to the South States.

I also suggest that the Senator may be in trouble in New York, because the legislature there, as a governmental body, has intervened in what is called a de facto situation. The Senator might find New York now faced with the de jure rulings of the court.

Mr. JAVITS. I should not consider that "in trouble." I should consider that just fine for New York.

FORMULA AND PROJECT GRANTS

I want to point out to my colleagues a serious matter about this bill which I fear is being overlooked, and I ask Senators to bear with me in a description of our current dilemma. My point of reference is the appropriations for formula and project grants to States which are authorized under section 314 of the Public Health Service Act.

In April 1969, the revised budget estimates of President Nixon for the fiscal year 1970 transferred the funding of tuberculosis control activities from project grants to formula grants because he was recommending the level of formula grants be increased by $18 million.

This transfer created serious problems because the allocation of TB control funds in project grants differs markedly on a State-by-State basis from the allocation that must be followed by the formula under existing law. Subsequently, however, we receive assurances from the Department of Health, Education, and Welfare that project grants for the control of tuberculosis would be awarded in order to supplement formula grants in

States where they fell short of the 1969 level for TB control activities.

In the absence of final action on the 19[illegible] budget item, the States do not have a[illegible]s to the promised increase in formula grant funds for the control of tuberculosis. And may I add parenthetically that the myth that tuberculosis is no longer a problem has been effectively put to rest by the recent events right here in the Capitol.

The States have accepted and, I am informed, done everything possible to cooperate to the fullest in this difficult transition. But because of the complication of a 1970 appropriations bill for HEW not yet passed, we have a very serious problem. I fear that we have not realized that under the continuing resolution which we have dutifully approved, section 314(d) allocations to States have been and must be made on the basis of a $66 million level. Under this circumstance, there is no way we can fulfill this necessary commitment to the States. Vitally needed tuberculosis control efforts will be seriously disrupted.

Additionally, and most importantly, Senators will recall that it was the unanimous wisdom of this body that $10 million should be added to fiscal 1970 section 314(d) block grants to States in order that sufficient funds would be available for a very necessary nationwide rubella vaccination program. At this point in time, unless we pass and until the President signs this bill, we will have failed to provide support to States and localities who are working desperately to forestall a German measles epidemic, the re[illegible] of which will be the inevitable harvest of mentally retarded children. This is a crisis situation. It is urgent that we immediately make available the necessary tuberculosis, rubella vaccination, and other programs, vital to providing every American with quality health care.

Mr. STENNIS. Mr. President, I yield 10 minutes and such additional time as he may wish to the Senator from Louisiana.

Mr. ELLENDER. Mr. President, I have not practiced law since I came to the Senate, but I thought that the law of the land was the law as fixed by Congress. Further, I have always believed that until that law is set aside or declared unconstitutional by the Supreme Court, the laws of the Congress are the laws of the land. In the course of my remarks, I am going to read what the law of the land is. That law of Congress, so far as I know, has not been passed upon by the Supreme Court.

It seems to me that the point of this debate is being missed by those seeking to modify the so-called Whitten amendments to the current bill. The point is that the Supreme Court has never rendered any decision whatsoever requiring the busing of schoolchildren from one district, or one school, or one neighborhood to another for conformity to the Constitution.

In its decisions in this area, the Court has made absolutely no mention of bus[illegible]g. The wellsprings of all this activity on the part of the lower courts and the doctrinaire bureaucrats of HEW are the simple statements of the Court in the Brown decision that segregation by law must be done away with. We have accomplished that in the South to a far larger degree than it has been done, in fact, by many areas in the North. Yet nowhere but in the South do we find buses traveling the city streets and rural byways for the sole purpose of establishing some form of racial balance.

A second point, Mr. President, related to the first, is that in no place can a decision by the Supreme Court be found, or by the appellate courts, to my knowledge, as to what degree of racial balance is considered constitutional and what degree of racial imbalance is unconstitutional. The Court has not so decided and I frankly doubt that national policies can get so far away from the bounds of reason that the Court can ever so decide.

In light of those two points, what do we find? We find a series of specious arguments developed by the bureaucrats of HEW and the hot-eyed civil rights attorneys in the Department of Justice. These arguments have been developed to enforce standards of racial balance in the South that have no basis in reality, reason, or law. They have basis only in half-thought-out theories of sociology that are rapidly being called into question. To impose this standard of racial balance, whatever they may mean, we have had a condition forced upon the South that no other part of the country would stand for. In the debate on amendments to the Elementary and Secondary Education Act bill here in the Senate a few days ago, even the opponents of the South acknowledged this fact.

Yet if the Court has not given guidance as to what is required in this area, the Congress has spoken on several occasions, and this branch of the Government has acted in an effort to negate exactly what is being forced upon our school districts today.

Now, Mr. President, I wish Senators would listen to this. What I am about to read is the law of the land. It is unequivocal. It has not been declared unconstitutional or passed upon by the Supreme Court or any other court of the land.

I read now from the Civil Rights Act of 1964, section 401, and I ask the distinguished Senator from Kentucky (Mr. COOPER) to listen to this.

Mr. COOPER. I am listening.

Mr. ELLENDER. This is the law. It has not been declared unconstitutional by any court. This appears in the Civil Rights Act of 1964. As the distinguished Senator from Kentucky knows, when a law is passed by Congress it is the law of the land until the court acts upon it and declares it to be unconstitutional. The Senator, I am sure, is in agreement with that?

Mr. COOPER. I am familiar with that.

The PRESIDING OFFICER (Mr. TALMADGE in the chair). The Senate will be in order so that the Senator may be heard.

Mr. ELLENDER. Let me read from the act:

> Desegregation means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin. But desegregation shall not mean assignment of students to public schools in order to overcome racial balance.

Mr. COOPER. Mr. President, will the Senator from Louisiana yield?

Mr. ELLENDER. One moment more. Let me read further, I quote from section 407 of the same act. It reads:

> Provided nothing herein shall empower any official—

I emphasize "any official"—

> or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or from one school district to another school district in order to achieve racial balance.

Mr. President, that has not been passed upon by the Supreme Court or any other court in this land. So, in my humble judgment, that is the law of the land.

Mr. COOPER. Mr. President, will the Senator from Louisiana yield?

Mr. ELLENDER. I yield.

Mr. COOPER. I am familar with all those sections. I must say, at the time we passed that act, I thought that it did apply, the words "racial balance," that it meant what it said, those words. But I think the Senator is wrong——

Mr. ELLENDER. I know of no decisions striking down that language. The Senator admits that when Congress passes a law, that law applies and is enforceable until someone challenges it and the Court declares it to be unconstitutional.

Mr. COOPER. That is correct.

Mr. ELLENDER. Without question.

Mr. COOPER. But the Court has interpreted that section——

Mr. ELLENDER. Where?

Mr. COOPER. I will give the Senator several cases——

Mr. ELLENDER. I would like to have a specific citation for reference.

Mr. COOPER. I do not recall them, but I have them at hand. So far as freedom of choice is concerned, this amendment to the bill hinges on freedom of choice. The Court has ruled in the Green case.

Mr. ELLENDER. I am speaking of "racial balance." I am not talking about freedom of choice.

Mr. COOPER. I am coming to it, because it involves busing. There is the Green case. There is the case of the city of Knoxville, which was passed on several years ago on the freedom-of-choice case. There are a number of other cases. I will try to recall them. One involves Gary, Ind. Another one involves the city of Cincinnati. There is one very recent case involving the city of Denver.

Mr. ELLENDER. Those are freedom-of-choice cases.

Mr. COOPER. They interpreted that as——

Mr. ELLENDER. I am speaking of busing.

Mr. COOPER. I am talking about that, too. They interpreted those cases. While they have never directly passed upon them, they did interpret them as to those two words, "racial balance"; that is, that it could not be used for desegregation

purposes. But I do say that they have interpreted racial imbalance as something entirely different from segregation—or desegregation. That was admitted on this floor the other day by many Senators on the southern side.

Mr. ELLENDER. Mr. President, I will challenge my good friend from Kentucky to cite one instance in which this proviso in the Civil Rights Act of 1964 was challenged or directly passed upon by the Court. As for freedom of choice, we have already passed far beyond that.

We are speaking now of balancing the schools.

I repeat, that the law is as plain as law can be written; namely:

Provided, That nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another school district in order to achieve racial balance.

That is the law, and I challenge any Senator to indicate to me where that language was declared unconstitutional by the courts. As a matter of fact, I do not believe that it has ever been placed before the Supreme Court at all.

Finally, Mr. President, I quote from sections 408 and 409 of the current bill. The Senator is familiar with those.

SEC. 408. No part of the funds contained in this Act may be used to force any school district to take any actions involving the busing of students, the abolishment of any school or the assignment of any student attending any elementary or secondary school to a particular school against the choice of his or her parents or parent.

SEC. 409. No part of the funds contained in this Act shall be used to force any school district to take any actions involving the busing of students, the abolishment of any school or the assignment of students to a particular school as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school.

Can there be any language more unequivocal than that which I have just read? Yet the proponents of the pending amendment to the bill seek to negate these plain and rational statements by putting in a phrase to cloud the issue and throw up a smokescreen. They seek to do two things.

First, they seek once again to protect northern school districts from the turmoil and social turbulance affecting public education in the South today.

Second, they seek to provide a peg for Mr. Finch, Secretary of Health, Education, and Welfare—a peg on which to hang his hat so that he may continue the bureaucratic machinations against the South. As I said, this is specious and it is false.

The argument is often made that the South has had 16 years to come into compliance with the law and that these harsh measures are justified. The liberals, so-called, have been found of saying this in the past, but for all practical purposes, the South is now in compliance with the law. The courts and HEW have seen to that at the expense of our public education system over the last 2 years.

A great many changes have taken place in the last 18 months which the figures from 1968 which have been put into the RECORD previously do not show. In fact, we are more in compliance than many other areas of the country with the Supreme Court's dictum. I know this to be true from personal observation, all over Louisiana. Looking at the facts, we note that the argument used against the South can be turned around, New York City, for instance, has had 25 years to deal with de facto segregation. Every other northern city has had the same time span. Yet what do we find but rampant segregation that is only now coming to be acknowledged.

Mr. President, I ask unanimous consent to have printed in the RECORD a table entitled "Negroes in 100 Largest School Districts, Ranked by Size."

There being no objection, the table was ordered to be printed in the RECORD, as follows:

NEGROES IN 100 LARGEST SCHOOL DISTRICTS, RANKED BY SIZE—NUMBER AND PERCENTAGE ATTENDING SCHOOL AT INCREASING LEVELS OF ISOLATION FALL, 1968 ELEMENTARY AND SECONDARY SCHOOL SURVEY

District	Total number of students	Total number of Negro students	Percent of total	Negroes attending: 0–49.9 percent minority schools		50–100 percent minority schools		95–100 percent minority schools		99–100 percent minority schools		100 percent minority school	
				Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total	10,417,750	3,250,319	31.2	418,633	12.9	2,831,686	87.1	2,201,589	67.7	1,798,445	55.3	1,091,978	33.6
New York, N.Y.	1,063,787	334,841	31.5	65,824	19.7	269,017	80.3	146,945	43.9	88,233	26.4	34,033	10.2
Los Angeles, Calif.	635,549	147,738	22.6	7,012	4.7	140,726	95.3	116,017	78.5	77,026	52.1	18,118	12.3
Chicago, Ill.	582,274	308,266	52.9	9,742	3.2	298,524	96.8	263,159	85.4	234,045	75.9	146,152	47.4
Detroit, Mich.	296,097	175,316	59.2	15,781	9.0	159,535	91.0	103,590	59.1	66,069	37.7	18,510	10.6
Philadelphia, Pa.	282,617	166,083	56.8	15,880	9.6	150,203	90.4	99,277	59.8	72,174	43.5	7,201	4.3

Mr. ELLENDER. Mr. President, this table from HEW, reflecting Negro students in the 100 largest school districts ranked by size, and the number and percentage attending schools at increasing levels of isolation as of the fall of 1968 in the continental U.S. elementary and secondary schools, reflects the following:

In the five largest school districts in the continental United States; namely, New York City, Los Angeles, Chicago, Detroit, and Philadelphia, there are enrolled 1,132,244 Negro students. This represents 39.3 percent of the total student enrollment of these five largest northern school districts and 18 percent, or nearly one-fifth, of all Negro students in the United States. These 1,018,005, or 89.9 percent of the total Negro enrollment in these five districts, representing 16.2 percent of all the Negro students in the United States, attend schools in these 5 largest districts that are 50 to 100 percent Negro or other minority group segregated; 728,988, or 64.4 percent of the total Negro enrollment in these five largest northern school districts, attend schools that are 95 to 100 percent segregated, and these 728,988 Negro students represent 11.6 percent of all the Negro students in the continental United States. Only 114,239, or 10.1 percent of all the Negro students in these five largest districts, attend majority white schools.

There is a total enrollment of 2,878,324 students in these five largest U.S. school districts and even though the total Negro student enrollment constitutes 39.3 percent of total enrollment, only 3.9 percent of total enrollment represents Negro students attending majority white schools.

Mr. President, I think the situation there is just as bad, if not worse, than in any area of the United States. All we can ask is fairness and that the laws be applied with equal vigor all over the country.

Mr. STENNIS. Mr. President, I yield 10 minutes to the Senator from Wyoming

The PRESIDING OFFICER. The Senator from Wyoming is recognized for 10 minutes.

Mr. HANSEN. Mr. President, I will vote against the amendment of the Senator from Maryland. Although I believe it is well intentioned, it is time that the Congress face up to the fact that the Federal effort to force integration through the school systems has been a dismal failure, depriving black children and white children alike of an opportunity to receive a quality education.

On February 26, I introduced into the RECORD an article by Mr. Vermont Royster of the Wall Street Journal, entitled "Forced Integration; Suffer the Children." Certain passages of this article are worthy of our further consideration. Mr. Royster stated what he called a simple proposition:

It is that it was, and is morally wrong for a society to say to one group of people that because of their color they are pariahs—that the majesty of law can be used to segregate them in their homes, in their schools, in their livelihoods, in their social contacts with their fellows. The wrong is in no wise mitigated by any plea that society may provide well for them within their segregated state.

He points out that the mistake came when the law was applied "to compel not merely an end to segregation but an end to separation by forced integration." He said further:

It was at this point that we fell into the abyss. The error was not merely that we

created a legal monstrosity, or something unacceptable politically to both whites and blacks. The tragedy is that we embraced an id[illegible]orally wrong.

He asks this pointed question:

Is it moral for society to apply to children the force which, if it were applied to adults, men would know immoral? What charity, what compassion, what morality is there in forcing a child as we would not force his father?

Mr. Royster notes that this concept has headed in the direction of a totalitarian state. He said:

No one thinks it moral to send policemen, or the National Guard bayonets in hand, to corral people and force them into a swimming pool, or a public park or a cocktail party when they do not wish to go. No one pretends this is moral—for all that anyone may deplore people's prejudice—because everyone can see that to do this is to make of our society a police state. The methods, whatever the differences in intent, would be no different from the tramping boots of the Communist, Nazi or Fascistic police states.

Mr. Royster says the essence of the school integration program "is that we have tried to apply to our schools the methods we would not dream of applying to other parts of society. We have forced the children to move."

I think we need to refer here to the reasoning of Mr. William Raspberry, a columnist for the Washington Post, and himself a member of the Negro community. He questions whether a reason that the schools are doing such a poor job of educating black children "is that we have spent too much effort on inte[illegible]ting the schools and too little on im[illegible]ving them." He asks this:

Isn't it about time we started concentrating on educating children where they are?

And he says forced busing "has accomplished nothing useful when it has meant transporting large numbers of reluctant youngsters to schools they would rather not attend."

Mr. President, I am convinced that the adoption of the language, as passed by the other body, will again focus the attention of Federal education efforts on the need to provide quality education to all of our children in all of our schools. This is the job of the school system.

Mr. President, the moment of truth is here. Fairminded people concerned about our children have spoken out against a Court decree that is a tragic failure.

It is ill starred.

Following in its wake have occurred violence, rioting, school closings, and death.

Those whose lives well-meaning people hoped to improve oftentimes have been blighted.

Fear grips the hearts of children, black and white alike.

Tax dollars are being wasted.

Noted black leaders inveigh against these misdirected expenditures. Bayard Rustin says only a good education can help propel the black man upward to full realized equality. He must be able to [illegible]ompete.

Mr. President, I have the greatest respect for those who have championed the fight for equality for all our citizens.

No civil rights bill has had the stamp of approval by this body since I have been here without my support.

I call upon my colleagues now to harken to the voices of the people—white voices and black voices—the voices of people whose first concern is for their children.

Let us rise above the pride of earlier positions that are now proven wrong. Let us look at what is happening in America. God grant us the humility to turn from a wrong course and the courage to change.

Mr. MATHIAS. Mr. President, I yield 10 minutes to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 10 minutes.

Mr. SCOTT. Mr. President, the so-called Whitten amendments, as passed by the House and approved by the Senate Appropriations Committee, are virtually identical to the provisions rejected by the Senate, and Congress as a whole, only a short while ago.

During the Senate debate of last December, I proposed a perfecting amendment similar to the amendment now pending. The amendment seeks to insure that implementation of sections 408 and 409 will comport with constitutional requirements.

Since our initial consideration of the matter, nothing has transpired which renders the Whitten amendments any less repugnant.

In connection with the earlier Labor-HEW appropriations bill, sections 408 and and 409 raised the same essential issue. The question was then—and is now—whether the Senate is going to legislate in accordance with constitutional principles, or whether we are going to enact provisions which conflict with the obligation of every school district to eliminate unconstitutional segregation.

In substance, sections 408 and 409 as approved by the Appropriations Committee would require the acceptance of ineffective desegregation plans for the purpose of complying with title VI of the Civil Rights Act of 1964.

Yet, such plans, commonly known as freedom of choice, have proved insufficient in terms of accomplishing school desegregation under title VI. Moreover, the Federal courts, including the Supreme Court, have ruled that freedom-of-choice plans are not constitutionally permissible unless they bring about an end to discrimination.

Sections 408 and 409 would remove the constitutional test of effectiveness as set by the Supreme Court and, in its stead, authorize the adoption of freedom of choice across the board—in every federally assisted school system, regardless of whether it achieves an end to discrimination.

As recently as last October 29, the Supreme Court ruled in the case of Alexander against Holmes, that "the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools." There may be legitimate questions with respect to the Court's terminology. But the Court's order was crystal clear, and that order cannot be effectuated in most cases under mere freedom of choice.

Make no mistake about it: unless remedied, sections 408 and 409 would represent an overwhelming retreat on school desegregation. They would reverse the Nation's longstanding commitment to equal educational opportunity. They would deepen the racial divisions which burden and bedevil this American society. And they would serve to encourage resistance to the law and to the decisions of the Supreme Court.

Shorn of their emotional appeal, the Whitten amendments are nothing more nor less than an attempt to preserve separate schools for whites and Negroes.

And I must add that they would conflict directly with the intent of the Stennis amendment, insofar as I understand its intent.

Senators who voted for that amendment with the understanding that existing school desegregation policies will be applied uniformly with equal force, should now understand that the Whitten amendments would nullify that intent.

Of course, the Whitten amendments cannot undo the work of the courts. But their enactment would, of course, make impossible the application of existing title VI requirements to the North, in the same way that these requirements now apply to formerly de jure school systems. Considering the avowed purpose of the Stennis amendment, it would indeed amount to monumental hypocrisy for the Senate to approve the Whitten amendments, the object of which is to do nothing about school segregation, whatever its origin and wherever it may prevail.

The Whitten amendments, we must understand, would not only conflict with and undermine effective enforcement of the title VI nondiscrimination provisions under HEW. They would also set in motion a severe psychological impact, undercutting all the efforts of local authorities and educators to negotiate in good faith for compliance with the law. Hundreds of local school boards, in the South and across the country, have made such efforts, often against strenuous odds, to cooperate in fulfilling their constitutional obligation to minority students.

In enacting the Whitten amendments, the Congress would be turning its back on those who have sought to abide by the law—while at the same time encouraging those who have chosen to resist.

Surely, at this stage in our history, the Whitten amendments are patently unacceptable. They are remnants of an earlier era in our Nation's history, and inappropriate to the times. They purport to resurrect standards rejected long ago—rejected because they effectively denied to many Americans their constitutional right to an equal education.

I urge the Senate to accept the amendment offered by the distinguished Senator from Maryland. Two amendments will be offered by the Senator from Maryland.

Mr. President, the only addition to these amendments is the phrase "except as required by the Constitution." We find ourselves, it seems to me, in the rather ridiculous position of having it argued

on the floor that the Government of the United States, the administration of the United States, and the President of the United States do not want language in the act "except as required by the Constitution." I want to reject that thesis with all of the force of which I am capable. I am unwilling to accept any inference whatever, that when the Secretary of Health, Education, and Welfare writes a letter to the chairman of the Subcommittee on Appropriations on February 20 and says he wants that language in, he means anything other than what he clearly and specifically says. He has said the same to me on many occasions.

Moreover, this is the policy of the administration; this is the desire of the administration. As the party's leader on the floor of the Senate, I accept that responsibility one more time of making that statement, which does not mean we are not all acting in good faith to achieve the acceptance of our several points of view which might differ. But I think it is about time we ceased that kind of an argument which undertakes to peer into the mind of another official and assert that that official means anything except what he authorized and caused to be said.

"Except as required by the Constitution" is the language. How can we object to language that says we shall live and abide by, function and operate under the Constitution of the United States?

Why, after all, would there be any objection to the addition of this language unless the purpose is other than has appeared in the debate? This is not too impugn the motives of anyone, but simply to go back to the fact that the mores of our varying communities in America have created for us problems which are now, happily, in many parts of the country in the process of solution.

The PRESIDING OFFICER (Mr. McINTYRE in the chair). The time of the Senator has expired.

Mr. MATHIAS. Mr. President, I yield the Senator 5 additional minutes.

The PRESIDING OFFICER. The Senator is recognized for 5 additional minutes.

Mr. SCOTT. Mr. President, there are millions of people of good will in America in every region of the country; and I come from one of those regions and I moved to live in another; and I think I understand something of the underlying problems which are here, for which I have the greatest possible sympathy. But there are millions of people who wish this matter could be settled right. I think it was Abraham Lincoln who said that no question is settled until it is settled right. We settled this question last December, for the purpose of this bill, when we voted 52 to 37 to abide by the Constitution. All I am asking is that we do it again.

It has been mentioned here that there are black leaders who say, "Oh, we are interested in good schools." That is all anyone should be interested in, but one of the essentials of a good school is that the people should have a right to an equality in the manner in which their right to an education is handled. If it goes beyond that, if the reference to black spokesmen indicates there is some growing, and I think unfortunate tendency toward black separatism, then the blacks who advocate that are falling into the same mistake the whites made before them in arguing black or white separatism rather than that we find ourselves preferably in a condition of affairs in the United States where all people are treated alike and where there is no need for separatism.

That is what I feel we are trying to do here.

Therefore, I make these two points: First, to proceed as required by the Constitution, it seems to me, would be the simplest and yet at the same time the highest obligation of the Senate of the United States. To avoid separatism, be it black or white, should be an emotional as well as a constitutional commitment of Americans.

We have gone through difficult times. People in my family fought to separate from the Union. People in my family held these beliefs. But the people of all families of America generally have discarded those beliefs as the decades have moved into a century and more; and the time is now for us to see that the Constitution is the supreme law of the land, as we are constantly insisting should be recognized by the judicial and executive branches. Let us be as good ourselves as we demand that others be. Let us abide by the law of the land and let us proceed as required by the Constitution. I hope this just position, this constitutional provision, this moral imperative will be enacted into this act. Therefore, as I said before, I support the Mathias amendment, and I yield the floor.

Mr. STENNIS. Mr. President, I yield myself 3 minutes.

I have the greatest admiration and affection for the Senator from Pennsylvania. Last week the Senator made one of the finest arguments I have ever heard to protect, maintain, and perpetuate the segregated school system in his wonderful State. That was the net effect of it. He offered a substitute to the amendment that was pending that was nothing more, with great deference, than a restatement of the law.

Today he again argues here for equal educational opportunities. At the same time, in his own State—and I speak with great deference to it and to him—in Philadelphia the records of HEW show that there are 7,206 black students there in nine of their schools that have 100 percent Negro student bodies. In that same great city, there are 57 schools with an enrollment of 68,000 students that have 99 to 99.9 percent Negro student bodies.

According to the Senator's argument, that condition will exist for 50 years. I have not heard of anything that Pennsylvania has done since 1954 to remedy this situation. The Civil Rights Commission—certainly not a southern institution—says over and over and over again that segregation is getting worse in places in the North year, year after year. These are not my words; these are the words of the Civil Rights Commission. The Office of Education in HEW, in its annual report of 1969, I believe, pointed out that in some places it is getting worse. I am not certain that is true in Philadelphia. But my proposition is this: According to their argument, they give great fa[illegible] and I know they are sincere—to the [illegible] of equal opportunity for all; but when it comes down to doing something about it in their States, they say "No, no, no."

They have a precedent, by this clause, that it is unconstitutional in the South, and they want to stand on it. I know that is what HEW stands on. Whether the Senator from Pennsylvania means to or not, they stand on this clause all the time.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. STENNIS. Mr. President, I yield myself 2 minutes. They point their finger at us and say, "You have unconstitutional segregation." The State of New York had a law on its books until 1938 that permitted equal but separate schools for the colored people. I know it is bound to have contributed to that pattern. The more modern New York passed a State law last year making it unlawful to bus these children around, and providing for freedom of choice. These same voices come in here and say, "We stand on high and holy ground. You are unconstitutional in the South. We are holy in the North. You must not frown on the Court." I have great respect for the Supreme Court, but, like every other human institution, they can make mistakes, and they made a mistake here—breaking into school sessions, running children out of their own schools, busing them to the other side of the county, taking respect[illegible]able teachers who had solemn contra[illegible] to teach in X school and saying, "No. You live here, but we are going to put you in Y school 20 miles away. Get there the best you can." These are solemn contracts.

We have gone over this before. This is not only tyranny, the way it is carried out, but it is in violation of the spirit of our laws. It is killing education.

Mr. President, I try to be a man of patience. The so-called Whitten amendment has the respectability of having passed the House of Representatives twice.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. STENNIS. I yield myself 1 minute.

As I said yesterday, it is here once more for our more serious consideration. The best defense I have heard on this floor—talk about astute lawyers—was here last week in arguing against those amendments, made by Senators from these same States. I am not referring to the Senator as an individual, but those from these same States protected to the last ditch every segregated school they had; but they pointed to us in the South and said, "You have dirty linen. You are discriminating. You are unfair. Our schools are integrated."

Mr. President, we are trying to maintain the concept of the neighborhood school, the community school, where all children will have better schools and better public education.

Mr. President, I yield 10 minutes to the Senator from Arkansas (Mr. McCLELLAN).

Mr. SCOTT. Mr. President, will the Senator withhold that and permit me to ...ly very briefly on the question of Phil...phia?

The PRESIDING OFFICER. Who yields time?

Mr. SCOTT. My fair home city is involved.

Mr. MATHIAS. Mr. President, I yield 3 minutes to the Senator from Pennsylvania.

Mr. SCOTT. Mr. President, the distinguished Senator from Mississippi has been my friend for more than four decades, and I would not in any way want to suffocate him by the warmth of my embrace, but we are friends. I understand his situation. I understand how well it will read in Mississippi. At the same time, I call his attention to the fact that here in this body, when the Senate gave its most serious deliberation to the Whitten amendment, it adopted the same amendment which we have before us now by a vote of 52 to 37.

Reference has been made to my city of Philadelphia. I respond proudly as a citizen of that city that indeed we have spent millions of dollars to attract, and have attracted, many people to return to the city to live who had heretofore moved, or in some cases the charge might be made fled, to the suburbs.

Moreover, our city has allocated, through its city council, many large sums of money for the purpose of correcting even the unintentional, so far legal but entirely deplorable de facto segregation, which I regret just as much ... the Senator does.

But I point out what I said a moment ago: That the Whitten amendments, unless we amend them as we have proposed, would conflict directly with the intent of the Stennis amendment as adopted heretofore, because Senators who voted for the Stennis amendment with the understanding that existing school desegregation policies will be applied uniformly, with equal force, should now understand that the Whitten amendments would nullify that intent. They would not undo the work of the courts, but their enactment would make impossible the application of existing title VI requirements to the North in the way the Senator advocates, in the same way that those requirements are now applied to formerly de jure school systems.

Therefore it would, to borrow a phrase from others, amount to "monumental hypocrisy" for the Senate to apply the Whitten amendments, the effort of which is to do nothing about school desegregation, whatever its origin or wherever it may prevail.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. STENNIS. Mr. President, I yield 12 minutes to the Senator from Arkansas.

Mr. McCLELLAN. Mr. President, I do not think any debate that may occur here today will change any votes. But we are considering a crucial issue, and I rise primarily for the purpose of making my positon clear for the record, because there will be in time, in my judgment, some measure of reaction to what is about to occur here. There is going to be a backlash, and some who are so strongly advocating forced busing will find that they may be injured more by this unconstitutional operation than those whom they seek to impose it upon.

Mr. President, the crucial issue being weighed and debated by this body today is, shall busing of schoolchildren from one school district to another, solely for the purpose of achieving a racial balance, be employed and compelled as an instrument of law and national policy? Further, shall such a policy be enforced under penalty of withholding Federal funds from any school district that defaults in compliance when ordered to do so?

That is the issue, Mr. President.

I strongly oppose such a harsh, compulsive, and improvident national policy.

Mr. President, what purpose is served by busing schoolchildren? What cause is served by denying freedom of choice? The practice of busing schoolchildren to achieve racial balance has done nothing whatsoever to contribute to the quality of education, or to enhance the ability of schoolchildren to learn. Quite to the contrary, the arbitrary and indiscriminate reassignment of schoolchildren and schoolteachers has proven to be most disruptive and degrading to the educational process.

Earlier this month, I noted an incident carried on the television networks, where a mother of five children was protesting a pupil assignment system that had her five children going to five different schools. Who can possibly benefit from such an arrangement? The answer is no one.

It has been pointed out that in 17 school districts of Florida, now under court control, 72 percent of the black children attend schools that are virtually all black. The public schools of Florida are being thrown into turmoil, as pupils and teachers are shuffled madly in an utterly senseless effort to achieve racial balance, no matter what the cost in consequenses of money, disruption, and demoralization.

If this madness—if this complete and utter disregard for orderly educational process—is good for Florida and other Southern States, then it must be equally good for the North, the East, and the West.

Mr. President, I cannot accept the argument that, "Oh, well, ours is de jure, yours is de facto." If it is wrong, it is wrong either way. If it is right, each State should pass a law compelling busing into those districts that are all black from the districts that are all white, and into the districts that are all white from the districts that are all black. If it is to benefit education, why not do it? You want to compel us to do it, because you say we have a different system that is unconstitutional.

We do not have that system now. We are doing our best in the South. Whatever faults we may have had in the past, we are doing our best today. But most of you are doing absolutely nothing to bring about a correction of the racial imbalance that has come about by a pattern of living in your communities.

Yes, Mr. President, there is going to be a backlash from what we are doing in this matter of forced busing. No good is going to come from it.

And if we accept and extend that premise, then let us contemplate for a moment what would happen in Washington, D.C., where 94 percent of the students are black and only 6 percent are white.

How will the courts and the Department of Health, Education, and Welfare achieve racial balance here in the District? If it is good, if it is wholesome, if it is necessary to give the best education, there is no right to hide behind the statement: "Well, we do not have that system de jure; therefore, we do not need to do anything about it." Should there be a law to require the busing of children who are black from the District of Columbia into the suburbs, where most of the pupils are white? Who wants to do that? No, it will not be done. In the first place, it is too expensive; in the second place, there is not any real concern about it. We in the South are the culprits. The idea is to punish the South. It has been that way all through the years; it is that way now.

Will we mobilize the military and its vast equipment to transport children hither and yon from the District of Columbia in a madcap effort to achieve this will-o'-the-wisp objective of making sure that we have "racial balance"? If forced busing is constitutional, then the power to do that exists. If it is right, if it is good, if it is necessary for the education of children, so as to give them the best education, then it should be done. But I do not believe that anyone who advocates this system will dare to advocate that it be done here in the District of Columbia. Surely the insanity of such a scheme—such a process—is apparent.

I am sure that most parents are apprehensive about having their children bused even short distances to attend their own neighborhood schools. But the need for this is obvious: We must get the children to school; and if it is too far to walk, transportation should then be provided. But to force a child of school age to ride on a bus because some ivory-tower social theorizer thinks it might somehow aid the cause of civil rights by forcing integration in such a fashion is a far different thing. It is an abomination to use a child in such a manner.

In so using the child, we are depriving him of educational time that could well be spent in the pursuit of classroom study and activity, instead of letting him sit idly on a bus, traveling a long distance from his own neighborhood for an end that cannot be justified.

Congress has spoken on this issue time and again. Laws have been enacted specifically denying funds and authority to officials to require the busing of children. Time and again those laws have been ignored.

Efforts are still being made to enforce someone's concept of civil rights; to integrate the races by the insidious and indefensible method of using schoolchildren as pawns to perpetrate and enforce a system that is demoralizing and destructive.

Who suffers? The schoolchildren, the educational system, and eventually Americans of all colors.

The PRESIDING OFFICER (Mr. McGEE in the chair). The time of the Senator has expired.

Mr. STENNIS. I yield 3 additional minutes to the Senator.

Mr. McCLELLAN. Whose purpose is served by such an inane policy? The child? The teacher? The taxpayer? Certainly and emphatically not, in each instance. Indeed, it is difficult, if not impossible, to discern any beneficiary from such a scheme except perhaps the bus manufacturers and gasoline distributors. The cost could be stupendous, as indicated by an article in a recent edition of the New York Times headlined "Los Angeles Told It Must Integrate All Schools by 1971."

According to this article, Superior Court Judge Alfred E. Gitelson ordered forced integration which would "cause massive disruptions in the Los Angeles system, the Nation's second largest. The district is currently about 22.6 percent Negro and 20 percent Mexican American, and by the definition of racial imbalance adopted by Judge Gitelson, 99 percent of the schools are segregated.

School Superintendent Robert F. Kelly said that the order would require the busing of more than 240,000 of the district's approximately 674,000 students, and warned that this would cost the district $40 million in the first year and $20 million every year thereafter. The district is already facing a deficit next year of about $34 to $54 million and the added costs would mean the virtual destruction of the school district.

Mr. President, I ask unanimous consent that the entire article be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. McCLELLAN. Instead of trying to add further confusion and turmoil to our educational system we should be lending our best efforts to rectifying and straightening out the stupendous mistakes we have already made.

The Federal Government has spent billions of dollars trying to improve the quality of education in America; $41.2 billion have been appropriated during the past 5 years for all Federal educational programs. I am sure we have had some success, but in all too many instances we are witnessing a rapidly deteriorating school system. Why? Primarily because they have taken control of the schools of America away from the people, the patrons of the school. They are dominated now from Washington, D.C.

Go back 10 years. The quality of education then was much better than it is today. It is now deteriorating everywhere. Why? Not because the money has not been provided. It has. You have more money, you have better facilities, you have better everything—except discipline and quality of education. Why? There is disrespect for the system as it is being operated today.

As an example, let us look at the Nation's Capital—shakedowns, robberies, knifings and shootings are becoming commonplace among the students. Police details have been assigned to patrol the hallways—and still the violence continues. Ten years ago we did not have the police guarding the schools anywhere. The schools in the Nation's Capital are a shambles. They are a national disgrace.

Does anyone truly believe that shifting children around the city and the suburbs will alleviate this problem? Such a program will only fan the fires of violence, hostility, and racism.

Mr. Joseph Alsop, in a column entitled, "Interracial Violence in Schools Requires a Nationwide Survey," January 21, 1970, stated:

> The fact is that something perilously close to a race war has now begun in just about every integrated high school in the United States This is not a Southern problem. It is a nationwide problem, with future political implications so grave that we dare not go on being ostriches about it.

Mr. Alsop also notes with alarm the "hair-raising" estimate that one-half the center city high schools and about 30 percent of the suburban high schools had serious hard-drug problems.

In calling for a nationwide survey of schools Mr. Alsop noted:

> Spot checks failed to reveal any integrated high school, anywhere at all, that was free of the poison of simmering racial conflict. Mercifully, it is mostly just simmering—taking the form, that is, of minor aggressions between whites and blacks.
>
> In too many places, moreover, the simmering conflict has already boiled up, or may soon boil over, into major violence between whites and blacks. And in New York, Chicago and elsewhere, there are actually high schools where the race war is so serious that large numbers of police have to be continuously stationed in the school buildings.

The PRESIDING OFFICER. The time of the Senator from Mississippi has expired.

Mr. STENNIS. Mr. President, I am authorized by the Senator from Washington to yield time to the opposition.

The PRESIDING OFFICER. Is the Senator yielding on the bill?

Mr. STENNIS. Yes, on the bill.

Mr. MAGNUSON. Mr. President, I yield the Senator from Mississippi 30 minutes on the bill.

Mr. STENNIS. I yield 2 additional minutes to the Senator from Arkansas.

Mr. McCLELLAN. Mr. President, it is simply unbelievable that anyone could think for even a moment about compounding this already explosive situation by adding the racist idea of busing schoolchildren across district lines.

Mr. David Lawrence, in a column last month, entitled "Frustration in Southern Schools," commented on a letter written to President Nixon by a school teacher with 14 years experience in Atlanta, Ga.

The teacher noted that Atlanta has made every effort to meet each requirement by the Federal Government, and the school system at large has adopted the 58 percent white to 42 percent Negro ratio required for the faculty. But it appears this is not enough, as the Federal court now is ordering that the faculty of each individual school must be integrated to that percentage and, as the Atlanta teacher writes, "worst of all, in the middle of the school year."

She added:

> Mr. Nixon, how can anyone fail to see what complete havoc will result from the transferral of approximately 1,700 teachers from one school to another in midyear. Any teacher can tell you what emotional turmoil this will create in the classrooms of Atlanta for both teachers and students alike. It surely would not take a teacher to understand the delay in the learning situation itself which would, of necessity, result from a change of this type.

She adds:

> If it is quality education—the type of a situation that is best for each child in a school system—that the Federal Government is concerned about and is making an effort to achieve, then there needs to be some rethinking done, because such a step as this cannot fail to bring about the opposite result.

Mr. President, a modest amount of wisdom and simple justice dictate the complete abrogation of the policy and practice of forced busing of schoolchildren for the sole purpose of achieving a racial balance.

The pending amendment, "except as required by the Constitution," is deceptive. It is a snare and a delusion. It conveys the implication that the Constitution "requires" busing to achieve racial balance. I refute that the Constitution either expressly or by implication contains any such requirement.

I hope that sections 408 and 409 will be retained in the bill without dilution or amendment.

EXHIBIT 1

[From the New York Times, Feb. 12, 1970]

LOS ANGELES TOLD IT MUST INTEGRATE ALL SCHOOLS BY 1971—COURT ORDERS PLAN BY JUNE 1—RULING WOULD REQUIRE MASS BUSING

(By Steven V. Roberts)

LOS ANGELES, February 11.—The Los Angeles school system was ordered today to present a plan by June 1 for the integration of the district's 555 schools.

Superior Court Judge Alfred E. Gitelson issued the landmark ruling in a suit instituted by the American Civil Liberties Union in behalf of 12 Negro and Mexican-American children.

He said the plan should be in effect for the school year starting next September, and under no circumstances later than September 1971.

If carried out, the order would cause massive disruptions in the Los Angeles system, the nation's second largest. The district is currently about 22.6 per cent Negro and 20 per cent Mexican-American, and by the definition of racial imbalance adopted by Judge Gitelson, 99 per cent of the schools are segregated.

EARLY APPEAL IS SEEN

School Superintendent Robert F. Kelly announced that he would recommend an appeal of the ruling "at the earliest possible time."

He said that the order would require the busing of more than 240,000 of the district's approximately 674,000 students.

Dr. Kelly warned that this would cost the district $40-million in the first year and $20-million every year thereafter. The district is already facing a deficit next year of about $34-million to $54-million and the added costs "would means the virtual destruction of the school district," the superintendent declared.

The decision comes at a time when pressure is mounting on several fronts to desegregate public schools in Northern districts.

Last month, a Federal judge here ordered the integration of the Pasadena school system and requested that a plan be completed by Monday.

Earlier this week in Washington, Senator Abraham Ribicoff of Connecticut announced his support of legislation that would provide uniform national desegregation standards, regardless of the cause of the racial imbalance.

In the past, Northern districts have argued that racial imbalance outside the South was de facto, or caused by residential patterns, rather than de jure, or caused by legal discrimination.

DISTINCTION IS VOIDED

Judge Gitelson not only dismissed the importance of that distinction today, he also found Los Angeles guilty of de jure segregation by not taking affirmative steps to relieve racial imbalance.

Moreover, the judge added: "The board has expended millions of tax funds for the protection, maintenance and perpetuating of its segregated schools, selecting and purchasing sites and building schools in segregated neighborhoods, knowing that said schools would be upon opening segregated or racially imbalanced."

The A.C.L.U. estimates that as a result of residential patterns, 85 per cent of the minority students here attend segregated schools.

In his opinion, Judge Gitelson said that the right to "equal educational opportunity is an unalienable right" guaranteed by the Fifth and Fourteenth Amedments, as well as by the California State Constitution and the rules of the State Board of Education. He continued:

"The right of all students to attend school and to receive the opportunity to acquire equal education, equal to the opportunity offered to all other students, irrespective of race, color, creed, economic or social circumstances, is a fundamental right, a legal right, a species of property, equal to, if not greater than, other tangible property rights, it being the right to be a human being, and requires that he receive said opportunity in integrated schools."

The judge also relied heavily on decisions of the Supreme Court in Brown v. Board of Education, the original desegregation case, and other cases, in which the Court ruled that segregated schools were inherently unequal.

In its brief, the A.C.L.U. pointed out that reading scores for students in schools with predominantly Negro and Mexican-American enrollments ranked far below those for students in predominantly white schools. In several minority-schools, students scored lower than 97 per cent of the children tested across the country.

Of the six high schools with the highest dropout rates in the city, five of them had enrollments that were more than 93 per cent minority group students.

On another critical point, Judge Gitelson said that the prospect of whites fleeing to the suburbs as result of his rulling could have no bearing on the decision.

The Board of Education had argued that such a flight would ensue, while the A.C.L.U. had contended that if all schools in the district were integrated, whites would have no "place to flee to."

The organization acknowledged, however, that the court's ruling would not affect schools outside the Los Angeles city district.

The suit had asked Judge Gitelson to rule that a racially imbalanced school was one in which the minority group enrollment was less than 10 per cent or more than 50 per cent. Under that definition 72 per cent of the local schools would be imbalanced.

Mr. STENNIS. I yield 10 minutes to the Senator from Georgia.

Mr. TALMADGE. Mr. President, at one time, every State in the Union had laws classifying children by race for assignment to public schools. In 1954 the Supreme Court held, in the Brown case, that children may no longer be classified by race for assignment to public schools. Since that time, all such things as de jure segregation in the public school facilities in America have been outlawed.

Ten years later, in the Civil Rights Act of 1964, Congress clarified that decision. Two provisions were written in the act defining what desegregation meant and what it did not mean. I ask unanimous consent that those two provisions of the Civil Rights Act be printed at this point in the RECORD.

There being no objection, the provisions were ordered to be printed in the RECORD, as follows:

SEC. 401. As used in this title—

(a) "Commissioner" means the Commissioner of Education.

(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

* * * * *

Provided, That nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards.

Mr. TALMADGE. Mr. President, subsequent thereto, the Department of Health, Education, and Welfare, and in some instances our Federal courts, came up with the strange thesis and conclusion that if there were a certain amount of black schools or white schools or a relatively high percentage of black students in a particular school or white students in a particular school, it constituted a dual school system. But that was applicable only in the South and nowhere else in the Nation.

Statistics have been cited on the Senate floor, time after time, that demonstrate we have a great deal more all-black schools than all-white schools outside the South than we do in the South. But the required assignment of teachers and assignment of students from school to school have been made applicable in the South, and in the South alone. They have held that where we had at one time a de jure system of segregation we must go in and reassign students in order to have a mathematically balanced system. What they have failed to realize is that at one time every State in the Union had a de jure system of segregation.

We have heard a good deal of talk about neighborhood patterns as a defense to the high degree of schools with black students and white students outside the South. We have neighborhood patterns in the South, also. The Brown decision held that we must be colorblind in the schools and operate just schools, neither white schools nor black schools, just schools.

But in recent years, they have forgotten that the Brown decision had said we must be colorblind. And, in the South and in the South alone, they have counted the number of white teachers and the number of black teachers, the number of black students and the number of white students, and they have come up with a strange order that we must reassign x number of teachers to some other school and x number of students, black or white, to some other school. That decision has been made in the midst of the school year and it has created utter chaos in the public school system.

I have received thousands of letters, telegrams, and telephone calls from constituents in my State. I picked out a few of them to demonstrate some of the horror, some of the tyranny, and some of the inequity that has occurred.

I hold in my hand a letter from a La Grange, Ga., mother. She has six children, the oldest is 15 and the youngest is 7. Her husband is in the Air Force in Taiwan. She works in a doctor's office and earns $67.39 a week to help support her family.

They have assigned the six children to five different schools, even though she lives virtually within the shadow of a school.

It will require $18 a week plus $8.50 for lunch money, making a total of $26.50 for cab fare and lunch money out of an income of $67.39 a week.

Mr. President, I never thought I would live to see the day in this country of ours where six schoolchildren in one family would be compelled by some court order or some HEW authority to have to go to five different schools.

I ask unanimous consent to have the entire letter from this La Grange, Ga., mother printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEAR SIR: In reference to our telephone conversation of the night of Jan. 29, 1970, I am replying in writing to our conversation that night.

(1) Due to the fact I have six children of Elementary & Junior High school age.

(2) In Sept. 1970 I will have my six children attending five different schools in our school zone.

(3) Enclosed is a copy of the schools and the distances from my home to each school. Plus the total number of miles I would have to travel before going to my job at 9:00 a.m.

(4) Due to my income, I could not pay anyone to provide transportation to five different schools.

(5) By local cab the rate is $3.00 per child round trip, this would be $18.00 per week. Plus $8.50 for lunch money. This would be at the present rate $26.50 for cab fare and lunch money. The cab co. doesn't know if this will still be the rate per child in Sept.

(6) My present wage is $67.39 per week. This would leave me $40.89 per week to feed, clothe, and buy gas for the week in question.

(7) I have no one to take my children to school but myself as I could not afford for the children to go hungry while I paid for their transportation. This would mean that I would have to take them to school myself, a distance of 10½ miles before going to work, plus leaving my job in the afternoon and going 10½ miles again to pick them up.

(8) As the wife of a member of the U.S. Air Force, serving in the Far East, living by myself with my children and trying to keep our family together, I have to work to help provide for the bare necessities of life. We bought our home on Park Ave. so our children in the elementary school could go to South West School which is in walking distance of our home.

(9) I must strongly protest to the extra hardships these changes in school will place on my children and myself.

(10) My youngest child, age seven (girl), will have to attend Kelly which is in one of the worst parts of the city. She is very small for her age, weighs only 33 lbs. and is a very nervous child. I fear for her safety and health in attending a school so far from her older brothers and sister who has seen to her safety since she started to school.

Any help you can give me in this matter would be greatly appreciated.

Mr. TALMADGE. Mr. President, I hold in my hand another letter from East Point, Ga., which I will read:

EAST POINT, GA.

DEAR SIR: My first obligation is to my God, second to my country and third to my family. I have prayed to God and I have fought for my country. It is now time to fight for my family.

We believe totally in the constitutional framework of our nation, and intend to work as responsible citizens within that framework.

As you know, anything that threatens individual worth, dignity and equality, and anything which threatens the neighborhood school is a threat to our whole society.

I support the concept of a unitary school system which shall provide equal educational opportunities for all.

I do not believe that humans can be mechanized and regimented in accordance with mathematical racial balance. I believe that this balance is a denial of individual worth and equality. The implementation of a mathematical racial balance of teachers and students will be utterly chaotic and will prevent the continued growth of quality education in our schools. We the people are sick and tired of this political demagoguery.

As an American citizen, I urge you to act immediately on this very serious matter.

Mr. President, I hold in my hand another letter from Athens, Ga., which states in part:

FEBRUARY 10, 1970.

DEAR SIR: I live in Athens, Georgia, and my two children age 11 and 7 are being bused across town when there are 3 schools closer to our home. For some reason our subdivision was picked to be bused (we are white) to East Athens and a group over there (black) is bused to the school we attended last year . . . These children as well as 136 others from University Heights were taken away from their friends, band, Girl Scout troops, and teachers just because a school board said so. Don't we have any rights at all?

Mr. President, I hold in my hand another letter from Gordon, Ga., in which is enclosed a list of bus assignments for Wilkinson County. As I look at the list, I find one that has a round trip of 86 miles a day, and many others nearly that far. The average for a school bus traveling in Wilkinson County, under this strange ruling, is about 50 miles a day.

Let us look at the bus that travels 86 miles. A schoolbus must stop and start. It drives relatively slowly so that in all probability it does not average more than 20 to 25 miles an hour. That would indicate that this particular bus, and many others like it, would have to travel 3 to 4 hours a day to get the children to and from school. In other words, they probably spend more time on the schoolbus than in the schoolroom.

Mr. President, what is happening to our country when we think that the principal purpose of a public school is to haul children around somewhere?

The purpose of the public school is not a sightseeing endeavor nor is it just a bus ride. The purpose of a public school is to educate our children.

I hold in my hand another letter from Atlanta, Ga., which states in part:

FEBRUARY 23, 1970.

DEAR SENATOR: My problem goes very deep—I have a daughter, Mrs. Dorothy C. Gilbert, who teaches in the Atlanta System. She taught 3 years at Roy City, Ga., 1 year at Ocilla, Ga., then moved to Atlanta and had one year at Marietta, Ga., and has been with the Atlanta System 21 years.

The problem that is so bitter is they have moved her from her school in 3 blocks from her home and put her in a school all the way across town. She is 52 years of age and there's no reasonable excuse on earth to have her make that change.

Mr. President, that is a mere sampling of the many thousands of letters I have received from constituents in my State. Other Senators in the South have received similar letters. This is what is going on throughout the length and breadth of the South—and only in the South.

When I was studying law at the University of Georgia, I thought that laws applied equally throughout the land. Congress acted on this matter in 1964 and held that there would not be any busing in order to achieve racial balance. But the Department of Health, Education, and Welfare, as well as the Federal courts, have completely ignored this mandate of Congress.

I hope that the Senate will be able to put a stop to it.

Mr. STENNIS. Mr. President, I yield 15 minutes to the Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 15 minutes.

Mr. ALLEN. Mr. President, I thank the distinguished Senator from Mississippi.

Mr. President, the amendment offered by the distinguished Senator from Maryland would seem to presuppose the fact that segregation and the methods to be used to achieve desegregation in our public schools is a problem in the South alone.

I believe that debate in recent days has demonstrated without question that segregation is a national problem.

The pending amendment would seek to preserve the status quo. It would seek to preserve the Federal school policy which permits segregation to continue to exist in the North but which demands desegregation now in the public schools of the South.

What the amendment does is to add six words and to say that "except as required by the Constitution" the enumerated actions cannot be done by HEW.

What are the matters that HEW is forbidden to do under the terms of the Whitten amendment? They cannot use any of the funds appropriated in the act for the purpose of requiring a school district to take any action with reference to busing students. They cannot use any of the funds appropriated by the act to require a school district to close schools. And they cannot use any of the funds appropriated by the act to require a child to go to a school other than a school chosen by that child's parents.

The effect of the pending amendment would say that those prohibitions provided by the Whitten amendment shall be applicable in the North, that the segregation that exists in the North will be protected by the provisions of the Whitten amendment, as amended by the Mathias amendment, or to relate it properly, the Scott amendment.

Under the existing policies of the HEW, they use the term "to overcome racial imbalance" as a protection for the segregation that exists in the North. And they interpret a similar provisions of the existing law to say that these methods cannot be used by HEW to seek to overcome the racial imbalance in the North, because they hold—the Department of Health, Education, and Welfare—that the phrase "to overcome racial imbalance" applies to de facto segregation only.

So, all that the Department of Health, Education, and Welfare is going to need is this phrase, consisting of six words, added to the bill to allow the present unfair and inequitable policies of HEW to continue. It would say, "except as required by the Constitution."

If the Constitution requires something, no action that the Senate can take can do away with that requirement. And if the Constitution prohibits something, no action by the Senate can legally pass a measure requiring that act to be done.

So, the phrase is absolutely without valid application. But it will be used by the Department of Health, Education and Welfare to protect the segregation in the North and to continue to use these very same methods that the act would forbid, to provide instant desegregation in the South.

I was very much interested in the logic of the distinguished senior Senator from Pennsylvania when he said that, if the Senate passes the Whitten amendment, and this would be in effect the rejection of the Mathias amendment, that if the Senate passes the Whitten amendment, that would be inconsistent with the action which the Senate took in passing the Stennis amendment.

I was very much interested in that logic. I would hope that if the Mathias amendment is agreed to, we would see and hear the distinguished senior Senator from Pennsylvania take the same position, that the Senate took action consistent with the provisions of the Stennis amendment. The Stennis amendment called for uniform application of desegregation policies. And a casual reading of section 408, which is sought to be amended by the Mathias amendment, would show that its provisions supply throughout the country.

So, it would seem to the junior Senator from Alabama that the adoption of the Whitten amendment and the rejection of the Mathias amendment would be action that would be consistent with the Stennis amendment. But the distinguished senior Senator from Pennsylvania takes the opposite position.

All that the people of Alabama want is equal protection of the law. And we feel that, by the adoption of the Whitten amendment—section 408 with-

out amendment—that the same rule will be applied throughout the country and that it will be consistent with the provisions of the Stennis amendment.

So, in effect, the amendment offered by the Senator from Maryland would say that HEW cannot take these actions with these funds, except in the South, that they are forbidden from taking them, except in the South, and that they cannot take these actions to overcome racial imbalance or de facto segregation.

So, the purpose of the Mathias amendment is to preserve segregation in the North and to require instant desegregation in the South.

I was very much interested, as we in the South give our good faith efforts to desegregate our public schools, in a pamphlet put out by the Regents of the University of the State of New York under date of December 1969 entitled, "Integration and the Schools." And in that survey or in that study, this statement is made:

Racial and social class isolation in the public schools has increased substantially during the past two years despite efforts to eliminate it.

So, we are going to continue, if the pending amendment is agreed to, to protect this segregation in the North that is continuing to increase, according to studies made by the Regents of the University of the State of New York.

I am interested, too, in why we have not heard from the black leadership of this country with regard to the position of those who espouse an amendment such as the Mathias amendment, which would continue segregation in the North. I wonder if they feel that segregation should be eliminated only in the South, or if they feel that a fence should be built around sections outside the South and that segregation should continue to be preserved there, as it will be if the Mathias amendment is agreed to.

I hope, Mr. President, that we will reject the Mathias amendment, because that action would be consistent with the provisions of the Stennis amendment which the Members of the Senate in a great show of statesmanship and fairness passed only last week and that they will give the people of this country, South as well as North, equal protection of our law. And that is all we are asking. And we think that is not too much to ask. I hope the Senate will defeat the Mathias amendment.

Mr. President, I yield the floor.

Mr. PRESIDENT. I thank the Senator from Alabama very much.

The PRESIDING OFFICER. Who yields time?

Mr. GRIFFIN. Mr. President, I yield 30 minutes to the distinguished Senator from Mississippi.

The PRESIDING OFFICER. Is that 30 minutes on the bill?

Mr. GRIFFIN. That is correct.

The PRESIDING OFFICER. The Senator from Mississippi may proceed.

Mr. STENNIS. Mr. President, I yield 10 minutes to the Senator from South Carolina.

Mr. THURMOND. Mr. President, we are again debating a subject which should be familiar to all of us by now. The House of Representatives has again attached the Whitten amendment to the appropriations bill for the Department of Health, Education, and Welfare. The House has also passed section 410, providing that HEW cannot withhold funds from school districts which use freedom of choice. The Whitten amendment, which added sections 408 and 409 to the bill, was added in the House Appropriations Committee by a vote of 30 to 11. An amendment, similar to those being offered here in the Senate, which would have nullified the effect of the Whitten amendment was rejected by the House by a vote of 145 to 122.

The Senate Appropriations Committee rejected a move to delete the Whitten amendment by a vote of 11 to 9. The issue is now before the Senate again for our deliberation and decision.

Mr. President, the amendment which is being offered to sections 408 and 409 has a sincere ring to it. "Except as provided in the Constitution" is nothing more than a stratagem to emasculate the amendment, but it sounds so pious that it ranks with the flag and motherhood among those things which it is said no politician can afford to oppose. But I believe we should contemplate the effect of adding these words. The first thing we must consider is that every piece of legislation passed by the Congress must meet the test of constitutionality. No such words are needed to insure that we act within the bounds of the Constitution.

Second, do we wish to add a 10th member to the Supreme Court? It would seem highly irregular to have the Secretary of Health, Education, and Welfare or, more likely, scores of lower-level bureaucrats serving as interpreters of the Constitution. The Federal bureaucratic establishment is obligated to carry out the will of Congress. To relieve them of this obligation by empowering them to override congressional intent through their own ideas of what the Constitution provides would be an extreme case of the Congress abdicating its role under the Constitution.

Mr. President, when we realize that the word "education" does not even appear in the Constitution, it should impress us even more with the folly of turning over to the Department of Health, Education, and Welfare the task of determining whether the Constitution allows the Department to carry out congressional mandates.

Third, we must consider whether we would be giving to HEW a responsibility which more properly belongs to the Judiciary and the Department of Justice. The duty of the Department of Health, Education, and Welfare regarding Federal aid to education is to determine if a given school district meets the congressional requirements necessary to receive the aid. It is the function of the courts to determine if a school district, or any other governmental subdivision, is operating within constitutional bounds. Further, it is the function of the Department of Justice to enforce the determinations of the Judiciary. The Departments of Agriculture, Interior, Transportation, Housing and Urban Development—and so on down the line, are not empowered nor structured to make determinations of whether or not recipients of their programs are meeting all requirements of the Constitution. The Department of Health, Education, and Welfare is certainly no exception.

Mr. President, besides the consideration already suggested concerning the proper role of the Department of Health, Education, and Welfare in our governmental structure, let us consider what is the central question before us. In my judgment, it is this: The right of the parent to choose the school his child will attend. Are we going to allow the State to make decisions which the individual should make?

Freedom of choice is the issue. It is right for the South, it is right for the entire Nation. It is the only policy consistent with a free society. It is the best policy for promoting sound education.

Mr. President, freedom of choice is not a southern subterfuge. It is a position with which both New Yorkers and South Carolinians can agree. The Members of this body are familiar with the New York law. New York is regarded as the citadel of liberalism in this Nation, but New York has a freedom of choice law. The State Legislature of Oklahoma passed a concurrent resolution on February 4 which petitioned the Congress to amend the Constitution as follows:

No person shall, by reason of race, color, creed or national origin, be refused admission to or be excluded from any public school nor be compelled to attend a desegregated public school.

Similarly, Mr. President, the legislature of my own State of South Carolina passed a concurrent resolution of February 18 memorializing Congress to call a constitutional convention for the purpose of returning the control of education to the States. The resolution specifically cited the abrogation of freedom of choice as the reason for the petition. I should like to read this resolution to the Members of this body:

S. 591

A concurrent resolution memorializing Congress to call a constitutional convention for the purpose of returning the control of public education to the States.

Whereas, the heretofore gradual erosion of state control and direction of the public educational system and institutions has now accelerated into a wholesale usurpation of power by a federal obligarchy; and

Whereas, under the aegis of the federal courts banning prayers and abrogating freedom of choice, federal administrative agencies have been obsessed with creating an omniscient and ubiquitous Federal Board of Education capable of deciding in the smallest and most remote school districts of our land problems peculiar to that district; and

Whereas, these Federal innovators have placed in grave jeopardy the public educational system of every school district in every state in the nation, and have wrought havoc, confusion and frustration; demoralized school officials and made a travesty of the educaiton of our children. Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

That the Congress call a constitutional convention for the purpose of returning the control of education to the states.

Be it further resolved that copies of this resolution be forwarded to Senator James P. Mozingo, each United States Senator from South Carolina and each member of the House of Representatives of Congress from South Carolina.

Mr. President, justice is the goal and freedom of choice is the path to that goal. The people have spoken—in New York, in Oklahoma, and in South Carolina. The House of Representatives—all of whom must face the people for reelection this November—have supported freedom of choice. Let us not allow the Senate to rob the people of their victory. Freedom of choice is the people's choice. Let us vote accordingly.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. I yield 20 minutes to the Senator from Virginia.

Mr. BYRD of Virginia. Mr. President, first, I want to say I do not approve of time limitations being placed on such vitally important pieces of legislation as the pending measure.

I feel a great deal of good has been accomplished during the past 3 weeks, during which these matters vitally affecting the people of our Nation have been debated in the Senate. I think the more information that the public can obtain as to just what the Department of Health, Education, and Welfare is attempting to do, the better is the entire country.

Mr. President, I shall discuss sections 408, 409, and 410 because they generally pertain to the same matter; that is, the legislative direction that Federal funds shall not be withheld for the purpose of forcing busing, to achieve racial composition, and also that the individual parents—black and white—may make the decision as to where they desire to send their children to school. I favor these amendments.

Mr. President, I ask unanimous consent that sections 408, 409, and 410 be inserted in the RECORD.

There being no objection, the sections were ordered to be printed in the RECORD, as follows:

SEC. 408. No part of the funds contained in this Act may be used to force any school district to take any actions involving the busing of students, the abolishment of any school or the assignment of any student attending any elementary or secondary school to a particular school against the choice of his or her parents or parent.

SEC. 409. No part of the funds contained in this Act shall be used to force any school district to take any actions involving the busing of students, the abolishment of any school or the assignment of students to a particular school as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school.

SEC. 410. No part of the funds contained in this Act shall be used to provide, formulate, carry out, or implement, any plan which would deny to any student, because of his or her race or color, the right or privilege of attending any public school of his or her choice as selected by his or her parent or guardian.

Mr. BYRD of Virginia. Mr. President, I have followed this debate for the last 3 weeks with a great deal of interest. I followed it with a great deal of interest today. If the matter were not so serious, it would be, I think, rather amusing to listen to the arguments made here on the floor of the Senate.

I must admit I am somewhat naive. I had assumed that the majority of the Senate felt that there should be racial balance in the schools whether those schools be in the South or whether those schools be in another part of the Nation.

But anyone who has been on the floor of the Senate today, anyone who has been on the floor of the Senate during the last 3 weeks, knows that that is not the case. Time and again we have heard is said that these busing laws should apply only to those areas where there is "official" segregation, which the Senator from New York and the Senator from Minnesota say is the southern part of our country.

Yet the fact is that there is no official segregation anywhere in our Nation. There has been no official segregation anywhere in our Nation since May 17, 1954, nearly 16 years ago.

It has been rather amusing to me, Mr. President, to hear those who have been so vehement in their denunciations of the South say, when it comes to applying the same standard to other areas of the Nation, "Oh, but we have a different situation." The senior Senator from New York said substantially that a number of times—We have a different situation in New York.

Well, perhaps so. He says they have a residential pattern of segregation which presents a great problem to them so they cannot tackle that problem, and the problem must be tackled only in the South.

Well, I guess that is one way of looking at it, but I feel that the people of this Nation have a great deal of intelligence. I believe strongly in the intelligence of the people of this Nation. I think they can see through this stuff—this sham.

The Senator from Connecticut (Mr. RIBICOFF) cut through the veneer 2 weeks ago. He pointed out that within a few blocks of where the Senator from New York lives there are a dozen schools which are 99 percent Negro. But no one intimately involved in that area of the Nation proposes to do anything about that.

The Senator from New York said on the floor today that it is a State problem, to be determined by the States. But if someone from the South says these matters are State problems he is bitterly assailed as a States-righter.

I want to say, in regard to the Senator from Connecticut (Mr. RIBICOFF), that my admiration for him does not stem from the speech he made 2 weeks ago. If one looks at the files of the Virginia newspapers, he will find that 9 years ago, in 1961, when I was appraising for the people of Virginia the Cabinet members appointed by the late President John F. Kennedy, I put ABRAHAM RIBICOFF at the top of all the men appointed to the Cabinet as being a man of unusual ability and integrity. So his speech of 2 weeks ago did not influence the high regard I long have had for Senator RIBICOFF.

Mr. ERVIN. Mr. President, will the Senator yield for a question?

Mr. BYRD of Virginia. Mr. President, I yield to the Senator from North Carolina.

Mr. ERVIN. Mr. President, I just [illegible] to ask the Senator from Virginia this question with respect to the speech made by the distinguished Senator from Connecticut (Mr. RIBICOFF). Does not the Senator from Virginia agree with the Senator from North Carolina that the Senator from Connecticut on that occasion violated the advice of Mark Twain that the truth is so precious that it should be used sparingly?

Mr. BYRD of Virginia. I like the expression of the Senator from North Carolina.

Mr. ERVIN. He told the truth, did he not?

Mr. BYRD of Virginia. He certainly told the truth.

I want to discuss for a moment the Department of Health, Education, and Welfare, because I fear that that Department is becoming more interested in social experiments than it is in education.

I am inclined to think that Secretary Finch may be out of touch with reality. I understand, judging from the newspapers, at least, that he has considerable interest in one or two political positions in California or elsewhere, but I will say this: If he were elected to either one of those positions and did not handle his mail any better than he does here, he would not be reelected.

When I communicate with the President of the United States, I get a prompt reply.

When I communicate with the Secretary of Defense, I get a prompt reply.

When I communicate with the Secretary of the Treasury, I get a prompt reply.

When I communicate with the Secretary of Agriculture, I get a prompt reply. But when I communicate with Secretary Finch, I do not get any reply.

The only way I get a reply from Secretary Finch is when his Under Secretary, Mr. Veneman, comes before the Finance Committee and I interrogate him on some matters that I have directed to Mr. Finch.

I had hoped that Mr. Finch might appear before the Committee on Finance this week when we were taking up the vitally important matters of medicare and medicaid.

Mr. Finch has not been before the Committee on Finance for more than a year, and that was the time when he came before the committee to appeal for the confirmation of his nomination. So I think he is probably out of touch with many of his constituents.

I admit that U.S. Senators are not very important. I do not claim that we are important. But I do claim that we are American citizens; and I think any American citizen who represents 4,700,000 persons should have the right to get a response to an important question from the Secretary of Health, Education, and Welfare. He is not a royal potentate.

The city of Newport News, Va., has had some difficulties in regard to the problem of HEW attempting to use Federal funds—the withholding of such funds—to force busing. I put several questions to

Under Secretary Veneman, of whom, as I say, I think very highly, I shall read several questions and answers into the RECORD:

Senator BYRD. Now, Mr. Veneman, the Secretary has repeatedly been quoted as stating that your department, HEW, does not force localities to bus school children to achieve racial balance. Is that correct?

Mr. VENEMAN. That is correct.

Senator BYRD. But is it not a fact that your department has refused to approve desegregation plans of individual school districts while at the same time indicating that plans involving busing would be acceptable?

Mr. VENEMAN. As a means of achieving desegregation.

Senator BYRD. Would you in your capacity have an appropriate official in the department communicate with the city of Newport News and tell them that you have no right to require them to bus students?

Mr. VENEMAN. We do not have a right to require them.

Senator BYRD. Let me ask you this: What is the difference, legally or morally, between ordering busing to achieve racial balance and issuing rulings which, in effect, leave the commuunity with no choice but to bus to achieve racial balance or lose federal funds? What is the difference?

Mr. VENEMAN. The Department—I really would like to make this clear. The Department has not required the transportation of students to achieve racial balance. And I do not think there is a court decision on that as yet.

Senator BYRD. Well, would you indicate what is difference, legally or morally, between ordering busing to achieve racial balance, which you say you do not do, and issuing rulings which, in effect, leave the community with no choice but to bus or lose federal funds?

Mr. VENEMAN. I do not think we have issued that ruling that leaves a community with no choice, Senator.

I suggest that the subordinates of Mr. Veneman in HEW read the record of the hearings before the Finance Committee last Thursday, and read Mr. Veneman's statement in regard to busing, because officials of that department have come into Virginia and have browbeaten the local officials into thinking that HEW has the right to force them to bus all the way across cities and counties for the purpose of achieving racial composition, when the law says they cannot do it, and when the Under Secretary of Health, Education, and Welfare, has said, before a Senate committee in a formal hearing, that they do not have the legal right to do that.

Mr. President, I support sections 408, 409, and 410. I oppose the amendment offered by the Senator from Maryland, as I think it is merely a red herring drawn across the trail.

I ask unanimous consent to have printed in the RECORD an editorial from radio station WBTM at Danville, Va., captioned "Freedom of Choice" and written by Leon Smith, of WBTM News, the last paragraph of which reads as follows:

Before the courts and the Congress combine to bankrupt the nation in the name of social justice, perhaps the judicial and the legislative should take another look at freedom of choice, which, after all, is the opposite of coercion by imposition.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

FREEDOM OF CHOICE

Some years back in the deep South, white supremacy advocates added to the burgeoning problems of northern welfare organizations by offering free, expense paid transportation to Negro families who wished to resettle and seek their fortunes north of the Mason-Dixon Line. Tickets purchased at bus depots and train stations were one-way. The motive was purely racial, but in retrospect, it was the germination of the idea of the busing of people to achieve integration across the land.

Today, in the North and the South, parents who have gotten together in localities to fight the inequities of the busing of their children outside their neighborhoods can proclaim 'til doomsday that race has nothing to do with it: neither the courts nor the Congress will accept their objections at face value.

We hold that motive here is not the primary consideration. What's at stake is the ultimate destruction of the public school system, and eventual economic chaos in local governments everywhere as city treasuries are emptied in trying to satisfy desegregation guidelines forced on them by the courts. The public schools are the threshhold of a bigger plan to integrate the American society. One wonders whether anybody, white or black, is willing to pay the price of precipitous mixing of the races. The cost cannot be measured solely in financial columns.

The cost of immediate school desegregation realistically must be counted for in the disruption of neighborhoods; the deterioration of education systems; the rise of private schools not always academically sound; certain violence in the schools, and danger to the life and limb of young students.

Next year in Danville, Virginia, if the Department of Health, Education and Welfare prevails, parents of the more affluent children will have to deliver their tots to the assigned elementary schools far from home. Those who can't afford private transportation will have to put their youngsters on the busy streets each morning for the long and hazardous trek. The very young will be walking in the streets where there are no sidewalks, and crossing countless busy thoroughfares, all in the name of sitting in a classroom in the company of racially opposite classmates.

It's either that or busing, an expense no city government yet has found it possible to pay for on anything approaching an effective scale for an entire school system.

Before the courts and the Congress combine to bankrupt the nation in the name of social justice, perhaps the judicial and the legislative should take another look at freedom of choice, which, after all, is the opposite of coercion by imposition.

Mr. BYRD of Virginia. Mr. President, I yield back to the Senator from Mississippi such time as I have remaining.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I yield the Senator from New Hampshire 5 minutes.

Mr. COTTON. Mr. President, I do not think I need but 2 minutes. Because I know this debate is about to close, I simply, as a member of the subcommittee which has worked long weeks and months on this HEW bill, and gone through the difficulties, want to say that even though I am perfectly satisfied with and did, in the past, vote for these sections as they appear in the bill, I am not a constitutional lawyer of great depth; but it seems to me that these words "except as required by the Constitution" can be argued both ways. The proponents of the amendment can say, "It does no harm for Congress to say they want the Constitution followed," and the opponents can say, "The Constitution has got to be followed, so the words have little significance."

Mr. President, I have a little personal interest here, I confess. Here we are, within 4 months of the end of the fiscal year. I am quite confident, or I might say quite convinced, that if we can send this bill to the House of Representatives without further amendment, we can get rather speedy approval of it, and I am equally convinced that the President would sign it, and we could go to work on the bill for 1971.

Therefore, though as a practical matter rather than a matter of principle, I also would like to maintain the bill as it is. Unless there is some far-reaching difference, something more than a bow to the Constitution involved, I earnestly hope that we can send this bill to conference without any further modifications.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I yield the Senator from Texas 3 minutes.

Mr. TOWER. Mr. President, I am somewhat concerned that we here in the Senate are still having to deal with the issue of the forced busing of our schoolchildren. However, the Department of Health, Education and Welfare has consistently found ways around the language that everyone here in the Senate thought was perfectly clear. In fact, in a letter from the Department commenting on our action last year on these very same amendments, which we thought were changing the law, it was stated:

By inserting the words "in order to overcome racial imbalance" at two points in the House-passed provisions, the Senate has preserved existing procedure with respect to HEW's school desegregation plan.

This means that we ratified the forced busing of students in the South, but have outlawed it in the North. This is fundamentally unfair. This is the very same idea of fairness that we debated so well and so long here just in recent weeks. That was that the South should no longer be treated any differently than any other section of the Nation. If busing is detrimental to the schoolchildren of the North, it is just as detrimental to the schoolchildren of the South. As the Senator from Connecticut so aptly put it, it is time that the revenge of the previous century be put behind us and the Nation work together again.

The Department of Health, Education, and Welfare has stated flatly and simply that busing in order to overcome racial imbalance means that busing is outlawed for 33 States but can be made, and almost uniformly is, mandatory in the remaining 17. This double standard imposed upon the Nation must be eliminated. We here in the Senate are on record that it is our policy to eliminate this dual system of administering our Nation's laws. This is our chance to do just that.

Mr. President, I am aware that there are some well-meaning people who oppose the position that our Nation's laws be administered uniformly, who believe that harsh methods must be used upon

the "peculiar" part of the Nation. I am aware that they see, in the effort for fair treatment, a dark, sinister plot that will somehow return us to the days of segregation. Nothing could be further from the truth. There is no one in this body or in any other responsible body arguing for a return to segregation. If there were, I would be the first to oppose it. What the proponents of the amendments seek is a workable plan of integration—one that does not destroy the very thing that it is trying to integrate. The main thrust of our Nation's school systems is education. In this education, there must be equality of opportunity. We all stand for that, but at the same time, there must not be a complete disruption of the community.

The PRESIDING OFFICER. The Senator's time has expired. All time of the Senator from Mississippi has also expired.

Mr. MAGNUSON. Mr. President, I yield the Senator from Mississippi 10 minutes on the bill.

The PRESIDING OFFICER. Does the Senator yield that time on the bill?

Mr. MAGNUSON. On the bill.

Mr. STENNIS. I yield 2 minutes of that to the Senator from Texas.

Mr. TOWER. We should not make commuters out of our young school children. Under many HEW plans, children are bused many miles from their homes into strange surroundings where they spend their day. After school, they are bused many miles home where they do not know any neighbors their own age, for their schoolmates live many miles across town. They are concerned. They are bewildered. It is we who must bear the blame for this concern and bewilderment if we do not make it abundantly clear now that we are against forced busing of any form. We must not allow any uncertainty, any way to read the law that would allow the operation of a dual system in the application of the law. We must keep these amendments in the bill for the good of our school children and for the good of education in the United States.

Mr. President, I might say that HEW forced a busing plan on my own community that was not popular, either in the white community, the black community, or the Mexican-American community. It was forced on them because somebody had the notion that the thing which all Texas needed was racial balance in the schools. Nobody wanted it.

If that is democracy, then I do not know what democracy is; and I was under the impression that we were living in a democracy in this country.

I can under no circumstances be branded as a racist or a segregationist. I taught for six schools in integrated classrooms. I made myself unpopular in some quarters of my State by advocating and defending the Brown decision, and I have never been considered anything but a moderate in my State on this matter.

I should like to submit to the Senate that we cannot continue to allow HEW to dictate what it thinks to be socially right to people when they do not want it, do not need it, and when it is disruptive of the educational system and thwarts the democratic process in the United States.

Mr. MATHIAS. Mr. President, I yield 2 minutes to the Senator from Michigan.

Mr. GRIFFIN. I shall not detain the Senate very long.

Mr. President, my position on this amendment is the same as it was when it was offered earlier. I support the amendment, and I hope that it will be adopted.

The amendment calls for the addition of the words "except as required by the Constitution." I find great difficulty understanding how we could do anything other than adopt an amendment which says that the Constitution of the United States is the supreme law of the land.

There has been a good deal of discussion here to the effect that HEW is doing something that it is not supposed to do. I would not defend it in every instance, and perhaps that is the case, but I think that for the most part they have been trying to follow the law.

Also, a good deal of discussion has been focused on the fact that the law is not enforced in the North as it is in the South. I should like to read an excerpt from a decision by the Seventh Circuit Court of Appeals involving Cook County, Ill. I do not do this because I approve of the decision, but only to point out what the law is and what needs to be followed. The decision reads, in part, as follows:

> Defendants . . . contend that they have no constitutional duty to bus pupils, in the District, to achieve a racial balance. It is true that 42 U.S.C. § 2006 withholds power from officials and courts of the United States to order transportation of pupils from one school to another for the purpose of achieving racial balance. However, this question is not before us. . . . [T]he district court's judgment is directed at the unlawful segregation of Negro pupils from their white counterparts which is a direct result of the Board's discriminatory action. Therefore, the district court's order is directed at eliminating the school segregation that it found to be unconstitutional, by means of a plan which to some extent will distribute pupils throughout the District, presumably by bus. This is not done to achieve racial balance, although that may be a result, but to counteract the legacy left by the Board's history of discrimination.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MATHIAS. I yield 1 additional minute to the Senator.

Mr. GRIFFIN. The Seventh District Court of Appeals, speaking to a case involving Cook County, Ill., continued as follows:

> The Constitution forbids the enforcement by the . . . School District of segregation of Negroes from whites merely because they are Negroes. The congressional withholding of the power [to correct racial imbalance] cannot be interpreted to frustrate the constitutional prohibition. The order here does not direct that a mere imbalance of Negro and white pupils be corrected. It is based on findings of unconstitutional, purposeful segregation of Negroes, and it directs defendants to adopt a plan to eliminate segregation and refrain from the unlawful conduct that produced it.

Mr. President, that is the reason why it is appropriate to insert the words in this amendment "except as required by the Constitution."

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. I yield myself 7 minutes, and that will be all the time I propose to use, just in a very brief summary.

Mr. President, however well-sounding the words in the Mathias amendment may appear, as a practical matter, when applied to this problem in these cases, it just means this: that they are going on the same way and, will read out of the Civil Rights Act of 1964 the prohibition with reference to busing, under what I think is a pure subterfuge, claiming it is for some purpose other than effecting racial imbalance, when that is the primary purpose.

The Supreme Court has not passed on the constitutionality of any kind of segregation, except the kind that we now call de jure, and HEW will continue—with some glee because it has happened before—in their old way of applying this law.

Therefore, with respect to its meaning, if we really want to get something that will affect this matter—and this is just a limitation that will not last for more than 4 months—we will have to sustain the amendment put in the bill by the House and reject the pending amendment.

I want to point out to my colleagues that this is no longer a question of integration. We are integrated throughout the Nation to a degree, and I think that will increase. It is a question now of saving the quality of education for all people. The black people are finding out that integration by force is not the answer that it tends to destroy the schools.

Mr. President, I do not hold any office in the Senate that gives me any national recognition or significance. I have here, however, letters from all over the United States, not including my State, that came pouring in because of the debate last week. Some of them are in pencil, some are from businessmen. They come from all over this country. I do not know how many hundreds and hundreds of letters there are. I have just read a few samples. Most of them are favorable to the position the Senate took last week on that amendment, but virtually all of them write not about integration but about preserving our public schools and the quality of education for all the children. The sentiment is changing. Realization is coming to the thoughts and minds of people everywhere. I think it shows at the grassroots.

The news magazines, in their columns, all agree now that there has been a change and that new consideration is to be given to the matter. Many of those columnists who are not favorable to what we call the position of the South admit that there is a change in direction and that something must be done to save the public schools and the quality of education. I believe that every single Member of this body realizes that something must be done; that to continue on these "flat tires" as we are now, will not solve the problem but will create graver problems in the quality of education.

Mr. President, I believe it is this matter of the busing of children which has awakened the people.

I have already told the Senate about the Michigan-born man from Florida, who was coming in from California. He told me about his 12-year-old son who was so bewildered, disappointed, and frustrated when he found out that he was going to be bused to the other side of town to go to school. He went to his father and said with the great expression of faith that all children have in the fathers, "Papa, I know you will do something about it for me. You will not let this happen to me."

When this same situation becomes apparent in other parts of the country, they will find out what this application means. Communities in the North with segregated schools, now sitting by with immunity, will come to know what it is all about. That is what this fight is over, to keep them immune.

I do not believe that anyone is gleeful about what is happening and bringing near disaster to our schools. This busing, this tearing up of the schools and putting education last and integration first, will not save this thing from coming to them.

Integration will take care of itself the only way it can be taken care of, by the natural process of time. Whatever degree it will be, it will be because the people want it that way. On a subject like this, it will be largely what they want. The Supreme Court of the United States cannot declare the feelings of both races to be unconstitutional. They cannot bring in any HEW conclusions into it. This thing must evolve. It cannot be mandated.

My plea is, let us lift up our eyes to-ard education. Let us stop this thing and take another look. I do not think it will affect a single court decree. This thing has gotten out of balance and become extreme, not because of anything the districts have done or failed to do, but because of the overzealous application of the 1954 decision and the additions which have been made to it in trying to bring about total enforcement.

Our plea is for quality education throughout the Nation. The entire Nation will have to stop and take a new look and make a new start.

The life of this amendment will be very short, about 4 months, but it will be a start, the best step, I think, that we can take at this time. Then we can reevalue the matter.

Mr. President, I yield back whatever time I have remaining and I want to thank the distinguished Senator very much for yielding me this time.

Mr. MATHIAS. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER (Mr. EAGLETON in the chair). The Senator from Maryland is recognized for 5 minutes.

Mr. MATHIAS. Mr. President, let me discuss briefly why I think section 408 as it appears in the bill needs to be amended, and why I think it is necessary to add the words I have proposed to be amended as an amendment.

I am not going to spend any time on the moral issues involved. I think they have been eloquently and fully debated. On that subject I would only say that, this being an appropriation bill, the section as written would work 4 months of mischief, 4 months of mischief in the hope of stopping the clock.

My observation of the pattern of history is that we cannot stop the clock. We can hold the pendulum—we can hold it with this section for 4 months, but the pendulum of history ultimately will begin to swing again, and having been held in an unnatural position, when let go, will swing with a mighty and irresistible surge.

I think it would be a great mistake to allow sections 408 and 409 to stand for the purpose of trying to stop the clock; but, more than that, I oppose them as they now are written because I think they are in direct conflict with section 804 of the act of 1965, United States Code 884, which prohibits Federal control of education.

I read.

> Nothing contained in this act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program, instruction, administration, personnel, of any educational institution of a school system . . . and so forth.

What section 408 does is, of course, to say to the States of this Union, "No matter why you do it, no matter who wants it in your State, you cannot do these things and have 1 penny of Federal money."

We are beginning, by the so-called Whitten amendment, to put a very real price on Federal money. I oppose on that ground alone, in addition to the grounds I have already stated, the imposition of this kind of prohibition of the States and on their exercise of freedom in shaping their educational institutions.

But how will the addition of the words, "except as required by the Constitution," alter that situation?

Well, section 408 specifies an inventory of remedial steps which can be taken, under hard circumstances, to achieve the constitutional goal enunciated in the Brown case.

The PRESIDING OFFICER. The time of the Senator from Maryland has expired.

Mr. MATHIAS. Mr. President, I yield myself 3 additional minutes.

I would hope, very frankly, Mr. President, that it were not necessary in any part of the country ever to take any of the actions which are prohibited or would be prohibited by section 408. I would hope that we would not have to go to those steps. But if wishes were horses, beggars would ride; and the fact is that in the hardest kind of cases some one of those tools may be necessary. If we prohibit by this act—and that is the only route, the only way to get to the consitutional goal or constitutional requirement—then we put the Secretary of Health, Education, and Welfare, or the President of the United States between the bark and the tree, because we have prohibited them from doing the only things which can enable them to discharge their sworn duty under the Constitution. I do not think we should prohibit them by affirmative language from taking the steps which are perhaps the only way in which they can discharge their duty.

I do not think we should eliminate these possible tools, because if they are not available, as the Secretary of Health, Education, and Welfare himself said in his letter addressed to Members of the Senate Committee on Appropriations in December—if these measures are not available, will make it less possible for the Secretary to persuade the various systems with which he must deal to use the simpler, easier, and more acceptable methods.

The President wants this amendment; Welfare has requested it. I submit it is a necessary amendment if we are to carry out the principles of the Constitution.

Mr. KENNEDY. Mr. President, the question posed by sections 408, 409, and 410 is whether the Congress chooses to ignore the mandate of the Supreme Court and nullify the constitutional rights of minority schoolchildren.

The effect of these provisions would be to severely undercut the purpose of title VI of the Civil Rights Act, which is intended to prohibit racial discrimination in programs and activities, including school districts, which receive Federal financial assistance.

Fifteen years after the Supreme Court's decision in the Brown case, it is now proposed under these sections that school districts not now in compliance with the law be permitted to revert to a form of pupil assignment—so-called freedom of choice—which has proven in most cases to be unconstitutional.

The amendments as passed by the House also prohibits the Department of Health, Education, and Welfare from "requiring" the busing of students, or "requiring" the closing of schools. It will be necessary to return to these matters later on. Controversial and often misunderstood, it is clear that these issues are broached merely to give the provisions a broader political appeal to the unsuspecting.

Under title VI, the Department of Health, Education, and Welfare is authorized to negotiate with school districts in order to achieve effective school desegregation. The Office of Education has provided, and is continuing to provide, extensive assistance to school districts in drafting and implementing plans that are educationally sound and that accomplish desegregation with a minimum of disruption. Only as a last resort has the Department felt obliged to bring a school system into administrative enforcement proceedings, which may ultimately lead to the termination of Federal funds.

HEW's guidelines with respect to the acceptability of freedom of choice desegregation plans under title VI reflect court decisions and actual experience with such plans.

In the latter case, it has become patently clear that in the vast majority of school districts, freedom of choice plans have not done the job; on the contrary, they have served to perpetuate illegal segregation.

In most school districts such factors as the traditionally subservient economic

and social status of the black community, intimidation and harassment by whites, and the sharp educational gap between white and black students, have all acted to bar mobility within the system.

In the main, therefore, the racial identifiability of the schools within the system was kept undisturbed. Freedom of choice was in fact no choice at all; it was rather a euphumism for continued massive resistance to the requirements of the law.

The weakness of freedom of choice in terms of the law is that it places the burden of desegregation on the Negro parent and the Negro child, despite the fact that the constitutional responsibility for assuring equal education rests with the school authorities.

Freedom of choice reinforces the fundamental characteristic of the dual school system, which is the fact that communities operate and maintain Negro schools and white schools—as opposed to just schools.

For the reason that freedom of choice did not in most situations meet the test of effectiveness, in terms of actual desegregation in the schools, this method of eliminating the dual school system was recognized as inadequate—and the Federal courts have upheld the proposition.

Thus, in United States against F Jefferson County Board of Education, the Fifth Circuit Court of Appeals, sitting en banc, ruled on March 27, 1967, that:

> Boards and officials administering public schools in this circuit have the affirmative duty under the Fourteenth Amendment to bring about an integrated, unitary school system in which there are no Negro schools and no white schools—just schools. . . . In fulfilling this duty it is not enough for school authorities to offer Negro children the opportunity to attend formerly all-white schools.

The court went on to say:

> Freedom of choice is not a goal in itself. It is a means to an end. A sechoolchild has no inalienable right to choose his school.

On May 27, 1968, in the case of Green against New Kent County, Va., the Supreme Court ruled unanimously that:

> In desegregating a dual system, a plan utilizing freedom of choice is not an end in itself. . . . The burden on a school board today is to come forward with a plan that promises realistically to work, and promises to work realistically *now*. . . . It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation.

The Court on this occasion quoted from the opinion of Judge Sobeloff in the case of Bowman against County School Board, as follows:

> Freedom of choice is not a sacred talisman; it is only a means to a constitutionally required end—the abolition of the system of segregation and its effects. If the means prove effective, it is acceptable, but if it fails to undo segregation, other means must be used to achieve this end.

In negotiating for compliance with title VI, HEW has consistently updated its requirements and procedures so that they conform to the latest court decisions. Hence, he so-called guidelines, issued in March of 1968, reflected the decisions of lower Federal courts on the issue of freedom of choice plans.

Freedom of choice plans were listed among other suggested methods, in the Department's first school desegregation guidelines issued in the spring of 1965. Since the early years HEW, in line with court decisions, has reaffirmed the validity of such plans—provided that in each particular school district the plan achieves a unitary, nonracial educational system. A freedom of choice plan, or any other plan of student assignment, is not of ultimate significance; what is essential is whether the plan disestablishes the dual school structure.

Now, the so-called Whitten amendment would contravene the decisions of the courts and the policies of HEW by forcing the Government to accept all freedom of choice plans—regardless of whether such plans are effective in ending discrimination.

The effect of enacting such a provision at this point in history could be disastrous. HEW would be bound by a congressional directive that contradicts the law of the land. School districts which have negotiated and implemented effective desegregation plans in good faith would be encouraged to go back on their word and resort to methods of proven ineffectiveness. On the other hand, school districts which are still in the negotiating stage would move to grasp this last legal straw and refuse to cooperate.

Particularly in light of the Supreme Court's latest order in the case of Alexander against Holmes County Board of Education, the Whitten amendment strikes a devastating blow at law and order—that popular idiom that is otherwise much maligned.

In Alexander, announced on October 29, the Court ordered that it is the obligation of "every school district to terminate dual school systems at once and to operate now and hereafter only unitary schools." The record makes clear that such a mandate cannot be effectuated under freedom of choice plans in the vast majority of school districts.

The important point is that for the purpose of complying with the law, in a manner that is most practical and suitable, HEW and school districts must retain flexibility. The Whitten amendment seeks to remove that flexibility by encouraging school districts to refuse to take reasonable and necessary measures in accordance with the requirements of the courts and of HEW, Federal district courts, for instance, have approved desegregation plans that embrace both busing and the abolishment of inferior schools.

HEW does not require the closing of schools and, in fact, encourages the retention of usable educational facilities. In some cases, it has been urged that schools be closed because their inferiority was such that under no circumstances was it possible to provide for quality education in a unitary system. However, in many cases, school districts have chosen to close usable all-Negro facilities instead of desegregating them, in the belief that white children would not attend them under desegregated conditions.

In conclusion, the architects of this amendment have not sought to disguise its intent, which is to turn back the clock on school desegregation. It is the same amendments proposed by the House last year, which failed to pass the Congress in its original, injurious state. I would hope that every person who is concerned about the course of civil rights in this country would oppose these provisions, which, if enacted, would throw the school desegregation program into chaos and confusion and cripple the enforcement effort.

Mr. MATHIAS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the first Mathias amendment.

Mr. MAGNUSON. Mr. President, because it is Saturday, and many Senators are not quite so available in the building as they would be on any other weekday, I should like to suggest the absence of a quorum to let them have time to come to the Chamber.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MAGNUSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MAGNUSON. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. STENNIS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STENNIS. Mr. President, what is the pending question before the Senate?

The PRESIDING OFFICER. The pending question is on the first part of the Mathias amendment.

Mr. STENNIS. Is that the amendment to section 408 of the bill as passed by the House?

The PRESIDING OFFICER. The Senator is correct.

Mr. STENNIS. And a vote of "aye" would amend that section. A vote of "nay" would allow it to remain as it is.

The PRESIDING OFFICER. The Senator is correct.

All time having expired, the question is on agreeing to the first part of the Mathias amendment. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALLOTT (when his name was called). On this vote I have a pair with the senior Senator from Rhode Island (Mr. PASTORE). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I withhold my vote.

Mr. NELSON (when his name was called). On this vote I have a pair with the junior Senator from Louisiana (Mr. LONG). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." I withhold my vote.

The assistant legislative clerk concluded the call of the roll.

Mr. BELLMON (after having voted in the affirmative). On this vote I have a pair with the Senator from South Dakota (Mr. MUNDT). If he were present and voting, he would vote "nay." If I were at liberty to vote, I would vote "yea." I withdraw my vote.

Mr. BIBLE (after having voted in the negative). On this vote I have a pair with the Senator from Indiana (Mr. BAYH). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. CANNON (after having voted in the negative). On this vote, I have a pair with the Senator from Washington (Mr. JACKSON). If he were present and voting, he would vote "yea"; if I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. FULBRIGHT (after having voted in the negative). On this vote, I have a pair with the Senator from Iowa (Mr. HUGHES). If he were present and voting, he would vote "yea"; if I were at liberty to vote, I would vote "nay." I withdraw my vote.

Mr. KENNEDY. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from Connecticut (Mr. DODD), the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. JACKSON), the Senator from Louisiana (Mr. LONG), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. Moss), the Senator from Rhode Island (Mr. PASTORE), and the Senator from Texas (Mr. YARBOROUGH) are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL) is absent on official business.

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOK), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senators from Illinois (Mr. PERCY and Mr. SMITH), and the Senator from Alaska (Mr. STEVENS), are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Ohio (Mr. SAXBE) is absent on official business.

If present and voting the Senator from Illinois (Mr. PERCY) would vote "yea."

The pair of the Senator from South Dakota (Mr. MUNDT) has been previously announced.

On this vote, the Senator from Kentucky (Mr. COOK) is paired with the Senator from Illinois (Mr. SMITH). If present and voting, the Senator from Kentucky would vote "yea" and the Senator from Illinois would vote "nay."

The result was announced—yeas 42, nays 32, as follows:

[No. 71 Leg.]

YEAS—42

Aiken	Dominick	Hatfield
Anderson	Eagleton	Inouye
Boggs	Fong	Javits
Brooke	Goodell	Kennedy
Burdick	Griffin	Magnuson
Case	Harris	Mansfield
Cooper	Hart	Mathias
Cranston	Hartke	McCarthy
McGee	Pearson	Schweiker
McGovern	Pell	Scott
McIntyre	Prouty	Symington
Metcalf	Proxmire	Tydings
Mondale	Randolph	Williams, N.J.
Muskie	Ribicoff	Young, Ohio

NAYS—32

Allen	Gore	Russell
Baker	Gurney	Smith, Maine
Bennett	Hansen	Sparkman
Byrd, Va.	Holland	Spong
Byrd, W. Va.	Hollings	Stennis
Cotton	Hruska	Talmadge
Curtis	Jordan, N.C.	Thurmond
Dole	Jordan, Idaho	Tower
Eastland	McClellan	Williams, Del.
Ellender	Miller	Young, N. Dak.
Ervin	Murphy	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—6

Allott, against.
Bellmon, for.
Bible, against.
Cannon, against.
Fulbright, against.
Nelson, for.

NOT VOTING—20

Bayh	Hughes	Pastore
Church	Jackson	Percy
Cook	Long	Saxbe
Dodd	Montoya	Smith, Ill.
Fannin	Moss	Stevens
Goldwater	Mundt	Yarborough
Gravel	Packwood	

So, the first Mathias amendment, on page 60, line 16, was agreed to.

Mr. MATHIAS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SCOTT. I move to lay that motion on that table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is now on the second Mathias amendment. Who yields time?

Mr. MAGNUSON. Mr. President, for the information of Senators, as I understand it, the second amendment of the Senator from Maryland is to add the same words to section 409. Is that correct?

Mr. MATHIAS. That is correct.

The PRESIDING OFFICER. Who yields time?

Mr. MATHIAS. Mr. President, I yield myself 2 minutes.

Mr. STENNIS. Mr. President, may we have order, so that we may hear the Senator explain his amendment.

The PRESIDING OFFICER. The Senate will be in order. The Senator from Maryland is recognized for 2 minutes.

Mr. MATHIAS. Mr. President, as the Senator from Washington has already explained, the purpose of the amendment is to add the same words to section 409 as have just been added by the Senate to section 408. The words are "Except as required by the Constitution,".

Mr. President, this, of course, is a section which differs from the preceding section in that it does not refer to the choice of parents, but includes the same inventory of educational tools, and relates them to a condition precedent to obtaining Federal funds otherwise available. With that exception I would say that the arguments that will be made on both sides will be very nearly identical to those made with respect to section 408.

I think if we attempted to debate this amendment in any lengthy manner we would be just plowing over the ground plowed over yesterday and today. I simply would like to say that again the administration, the President, and the Secretary of Health, Education, and Welfare have requested this amendment. They want it. I hope the Senate will support it.

The PRESIDING OFFICER. Who yields time?

Mr. SCOTT. Mr. President, will the Senator yield me 2 minutes?

Mr. MATHIAS. Mr. President, I yield 5 minutes to the Senator from Pennsylvania.

Mr. SCOTT. Two minutes are enough.

Mr. President, I think the issue is the same as before. The votes are running about the same as they did in December, on an average 4-to-3 ratio. I think we are all pretty sophisticated people around here, and I think we realize that very few of us are changing votes. Therefore, I rise only to say that I support the amendment.

The PRESIDING OFFICER. Who yields time?

Mr. STENNIS. Mr. President, I yield myself 10 minutes, and, of course, I will yield to any Senator who may wish some time.

I believe we can get to this issue quickly. There is a difference, however. There is a distinct and substantial difference between this amendment and the other one, and page 60 of the bill we have before us reflects this amendment.

The primary point I want to make—and there is no argument about this—is that this is a limitation on funds concerning the requirement of busing. That is a big part of the amendment. It does not have as far-reaching an element of so-called freedom of choice or anything of that kind which was contained in the amendment we just voted on.

I say to Senators who are interested and concerned and have felt the effects of the extensive requirement as to busing, this is the amendment you are vitally interested in, I believe. It does not involve any kind of court order. In my humble opinion, it does not touch top, side, or bottom any kind of court order or any restriction in the carrying out of any court order.

The limitations, as I understand it, on HEW is solely on the point of getting Federal funds. That is all. It is merely a limitation on an appropriation bill. It has absolutely nothing to do with the 14th amendment. It has nothing to do with any Supreme Court decision in the field of integration. I respectfully say it is a field in which I do not believe the Court has any jurisdiction, because Congress has the sole power to appropriate money, and under such conditions and limitations as the Congress may see fit. So it originates in the legislative branch of the Government. It ends in the legislative branch of the Government, except for the question of the President's signature. This language, clearly a limitation, is unmistakable as to what it means. It will continue in effect for only 4 months.

Mr. President, I believe I am entitled to an opinion on this, because I have been involved in this subject not for months, but for years. The provision will

not help or hinder HEW one iota, because of that short period, but it is a stop, look, and listen caution sign to HEW. The appropriation does not knock out any district in dealing with the money. It just puts a limitation on the administration of the funds. The provision will not bar the Court or be fatal to HEW. It will give an unmistakable sign—a red light—with respect to busing, and if Senators are interested in that question in their area, this is the way to do it.

I believe if this amendment were really understood and digested in this body, it would sweep through here like a forest fire. I mean Senators have gotten close enough to this problem, their constituents have, the parents have, the children have, to know that something must be done. So let us put up a caution light, a red light, for 4 short months. We are not going to hurt HEW. We will then have a chance to have a new start.

Mr. COOPER. Mr. President, will the Senator yield for a question?

Mr. STENNIS. I yield.

Mr. COOPER. I always respect the Senator's views, but the Senator emphasized that section 409 has no meaning or objective except with respect to busing of students. I notice the language on lines 24 and 25 of page 60:

The abolishment of any school or the assignment of students to a particular school.

I know the Senator is making his point. A great many people are interested in the question of busing.

Mr. STENNIS. Yes.

Mr. COOPER. The Senator knows courts have ruled against the abolition of schools to maintain segregation, and the Supreme Court has ruled on that question. Of course, assignment of pupils could be a freedom of choice. I am not interpreting the Senator's amendment, but he made the statement that it was concerned only with busing. But the abolishment of any school is involved in that language.

Mr. STENNIS. Mr. President, that is my belief about this amendment, and I emphasize that this matter is so temporary that there is not going to be any real harm done, and I believe good will come out of it.

Mr. President, I believe no other Senator wishes to speak. We feel this matter has been fully debated already, because the other amendment was really broader than this.

Mr. MATHIAS. Mr. President, I yield back my time.

Mr. STENNIS. Mr. President, I yield back my time.

Mr. MAGNUSON. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. STENNIS. Mr. President, would the Chair state the parliamentary situation about the amendment?

The PRESIDING OFFICER. The question is on agreeing to the second Mathias amendment, which would add additional language to section 409. A "yea" vote is a vote to support the Mathias amendment. A "nay" vote is a vote to oppose the Mathias amendment.

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NELSON. On this vote I have a live pair with the Senator from Louisiana (Mr. LONG). If he were present, he would vote "nay." If I were at liberty to vote, I would vote "yea." I therefore withhold my vote.

Mr. ALLOTT (after having voted in the negative). On this vote I have a live pair with the Senator from Rhode Island (Mr. PASTORE). If he were present, he would vote "yea." I have already voted "nay." I withdraw my vote.

Mr. MANSFIELD. On this vote I have a pair with the Senator from Washington (Mr. JACKSON). If he were present, he would vote in the affirmative. I have already voted in the affirmative. I withdraw my vote.

Mr. FULBRIGHT. On this vote I have a live pair with the Senator from Iowa (Mr. HUGHES). If he were present, he would vote "yea." I have already voted "nay." I withdraw my vote.

Mr. KENNEDY. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from Connecticut (Mr. DODD), the Senator from Iowa (Mr. HUGHES), the Senator from Washington (Mr. JACKSON), the Senator from Louisiana (Mr. LONG), the Senator from New Mexico (Mr. MONTOYA), the Senator from Utah (Mr. MOSS), the Senator from Rhode Island (Mr. PASTORE), the Senator from Maryland (Mr. TYDINGS), the Senator from Texas (Mr. YARBOROUGH), are necessarily absent.

I further announce that the Senator from Alaska (Mr. GRAVEL) is absent on official business.

I further announce that, if present and voting, the Senator from Alaska (Mr. GRAVEL), the Senator from Maryland (Mr. TYDINGS), and the Senator from Indiana (Mr. BAYH) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Kentucky (Mr. COOK), the Senators from Arizona (Mr. FANNIN and Mr. GOLDWATER), the Senator from Oregon (Mr. PACKWOOD), the Senators from Illinois (Mr. PERCY and Mr. SMITH), and the Senator from Alaska (Mr. STEVENS) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Ohio (Mr. SAXBE) is absent on official business.

On this vote, the Senator from Kentucky (Mr. COOK) is paired with the Senator from Illinois (Mr. SMITH). If present and voting, the Senator from Kentucky would vote "yea" and the Senator from Illinois would vote "nay."

On this vote, the Senator from Illinois (Mr. PERCY) is paired with the Senator from South Dakota (Mr. MUNDT). If present and voting, the Senator from Illinois would vote "yea" and the Senator from South Dakota would vote "nay."

The result was announced—yeas 41, nays 34, as follows:

[No. 72 Leg.]

YEAS—41

Aiken	Brooke	Cranston
Anderson	Burdick	Dole
Bellmon	Case	Dominick
Boggs	Cooper	Eagleton
Fong	Magnuson	Pell
Goodell	Mathias	Prouty
Griffin	McCarthy	Proxmire
Harris	McGee	Ribicoff
Hart	McGovern	Schweiker
Hartke	McIntyre	Scott
Hatfield	Metcalf	Symington
Inouye	Mondale	Williams, N.J.
Javits	Muskie	Young, Ohio
Kennedy	Pearson	

NAYS—34

Allen	Gore	Russell
Baker	Gurney	Smith, Maine
Bennett	Hansen	Sparkman
Bible	Holland	Spong
Byrd, Va.	Hollings	Stennis
Byrd, W. Va.	Hruska	Talmadge
Cannon	Jordan, N.C.	Thurmond
Cotton	Jordan, Idaho	Tower
Curtis	McClellan	Williams, Del.
Eastland	Miller	Young, N. Dak.
Ellender	Murphy	
Ervin	Randolph	

PRESENT AND GIVING LIVE PAIRS, AS PREVIOUSLY RECORDED—3

Allott, against.
Fulbright, against.
Nelson, for.

NOT VOTING—22

Bayh	Jackson	Percy
Church	Long	Saxbe
Cook	Mansfield	Smith, Ill.
Dodd	Montoya	Stevens
Fannin	Moss	Tydings
Goldwater	Mundt	Yarborough
Gravel	Packwood	
Hughes	Pastore	

So the second Mathias amendment, on page 60, line 22, was agreed to.

Mr. MATHIAS. I move to reconsider the vote by which the amendment was agreed to.

Mr. SCOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SCOTT. Mr. President, I call up my amendment to section 410 of the bill and ask that the clerk report it.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read the amendment, as follows:

On page 61, after line 2, strike out:

"SEC. 410. No part of the funds contained in this Act shall be used to provide, formulate, carry out, or implement, any plan which would deny to any student, because of his or her race or color, the right or privilege of attending any public school of his or her choice as selected by his or her parent or guardian."

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. SCOTT. I am glad to yield to the distinguished Senator from Washington.

Mr. MAGNUSON. For the benefit of the Senate, I will ask the Senator a question. This amendment is to strike out the so-called Jonas amendment?

Mr. SCOTT. That is correct.

Mr. MAGNUSON. Which is section 410, on page 61 of the bill.

Mr. SCOTT. That is correct. Line 3.

Mr. MAGNUSON. To vote it up or down.

Mr. SCOTT. To vote it up or down, assuming that there is no contrary motion.

Mr. STENNIS. Mr. President, will the Senator yield to me for a statement?

Mr. SCOTT. I yield.

Mr. STENNIS. Mr. President, I am opposed to the amendment offered by the Senator from Pennsylvania, for various reasons. The contents of this

amendment in many ways are similar to the other two amendments.

I want to yield to the distinguished Senator from North Carolina the time that is allotted to the opposition, and I may want some of that time for my own use.

I thank the Senator for yielding to me.

The PRESIDING OFFICER. Who yields time?

Mr. SCOTT. I yield myself 10 minutes.

Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. Senators will please take their seats, so that we may hear the Senator from Pennsylvania.

Mr. SCOTT. Mr. President, section 410 would work the same mischief as the original Whitten amendments—except for the additional fact that its implications for local educational policy are far more serious.

In essence, the purpose of this provision is to establish under Federal law a universal right to freedom of choice.

We must ask ourselves, in this regard, whether it is the proper function of Congress to place restrictions on local school boards and determine the manner by which they shall assign students. The effect of enacting section 410 would be to preempt the traditional authority of State governments and of local school authorities to establish educational policy.

Section 410 would sanction so-called "freedom-of-choice" desegration plans, even though such plans may not meet the requirements of title VI of the Civil Rights Act of 1964 or the mandate of the Supreme Court.

As indicated during the debate, the Supreme Court ruled, almost 2 years ago, that freedom-of-choice plans may not be constitutionally permissible. The test as to whether such a desegregation plan is or is not acceptable lies in the extent of desegregation accomplished in each and every case. Section 410 contravenes this crucial decision and would legalize freedom of choice in all school districts for the purpose of compliance with title VI.

In substance, section 410 would raise the specter of two contradictory standards of school desegregation. We have already heard much in this body about double standards, real or imagined. The Senate should know that the enactment of section 410 would impose upon all school districts conflicting standards—one applied by the courts and presumably the Justice Department, and the other applied by HEW.

I should like to repeat that. If this section is enacted, two sets of standards would have to be administered, each opposite to the other, and one would have to be administered by the Department of Justice and the other by HEW.

School districts intent upon cooperating with Federal officials in eliminating discrimination already face a difficult and demanding task. To place upon them the added burden of confusion imposed under section 410 is to make the job nearly impossible.

Mr. President, It is clear that, unlike sections 408 and 409, section 410 extends the privilege of so-called freedom of choice directly to parents. The provision thus circumvents the traditional power and jurisdiction of school districts.

In addition, it appears that section 410 would mandate the termination of Federal aid to any school district which implemented a plan that in any way denied to students and parents their freedom of choice. School districts are thus forced to make a painful and awkward decision: abide by the Federal nondiscrimination provisions against freedom of choice and you lose Federal funds; adopt freedom of choice in accordance with section 410, and invite court litigation which will inevitably require the implementation of something other than freedom of choice. So in one way you lose the funds and in the other way you lose what is allegedly sought in this section. Either way, the sponsors of the amendment lose something of value to their concept as well as to that of those who would strike.

Federal courts have been ordering desegregation which goes considerably beyond the limitations of mere freedom of choice. Section 410 would encourage school districts to defy the orders of the courts. Indeed, it appears that unless they did so, they would lose Federal education funds in accordance with section 410, which requires freedom of choice and nothing else.

Contemplate that for a moment. This section, as now written, says, in effect, to the school districts: "Defy the courts and lose the money. Unless you do so, you are going to lose the funds, because you are asking for freedom of choice and nothing else in the very complicated field of administration of the whole program."

Mr. President, I believe that Congress must attempt to provide every possible assistance to local school officials to enable them to work toward compliance with the law.

Section 410 attempts to escape this joint responsibility of Federal and local authorities. Instead of seeking to help school districts meet the requirements of the law, section 410 would place school districts in a wholly untenable situation. The provision's effect would be to force school districts into the arms of the courts, if they chose to follow the deceptive escape route designed in section 410. And, ironically, it is precisely the Federal courts which are demanding total desegregation now—to the abhorrence of those who support section 410.

Mr. President, I urge the adoption of the pending amendment, so as to preclude the chaos and confusion which would inevitably ensue if section 410 is retained in the bill. School districts deserve honest and forthright answers from the Congress as to their responsibilities under Federal law. Section 410 would lead us in the wrong direction.

The Secretary of HEW says in his letter to the chairman of the subcommittee on February 20, with reference to section 410:

> Insofar as the new section 410 of the bill is concerned, it is my belief that it may well have been born out of misunderstanding on the part of the House concerning the role and activities of the Office for Civil Rights of this Department.

Mr. President, I would like to make that point very clear because I think there is real misapprehension on the so-called Jones amendment.

I continue reading:

> Let me say that it is not the role of the Office for Civil Rights to interpret the Constitution and the law. That is the responsibility of the courts. Once the courts have acted, it is the responsibility of this Department to extend a helping hand to school districts in their efforts to comply with court decisions. Because the courts have already, in many instances, decreed that "freedom of choice plans" that result in discrimination are illegal, all that section 410 can do is prevent this Department from working with and helping local school districts who are trying to comply with such court orders. Because section 410 does not appear to be consistent with actions of the courts, it could only produce an administrative nightmare for our Department. If we are to avoid the administrative chaos that this section would produce at all levels, section 410 should be delected from the bill.

Mr. President, this is even more serious than the other two amendments.

Mr. MAGNUSON. Mr. President, will the Senator from Pennsylvania yield?

Mr. SCOTT. I yield.

Mr. MAGNUSON. Will the Senator put that entire letter from the Secretary in the RECORD? It covers many points in the whole bill and is the latest word from HEW. I neglected to put it in the RECORD before.

Mr. SCOTT. Yes.

Mr. President, I ask unanimous consent to have the letter printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

> DEPARTMENT OF HEALTH,
> EDUCATION, AND WELFARE,
> *February 20, 1970.*
>
> Hon. WARREN G. MAGNUSON,
> *Chairman, Subcommittee on Departments of Labor and Health, Education, and Welfare and Related Agencies, Committee on Appropriations, U.S. Senate, Washington, D.C.*
>
> DEAR SENATOR MAGNUSON: This letter contains our comments and recommendations on H.R. 15931, as passed by the House of Representatives yesterday, February 19.
>
> Statements are enclosed which describe the effect of the House action on H.R. 15931 wherever this action differs from either the President's budget, as amended, or from H.R. 13111 as passed by the Senate on January 26. I am also enclosing a listing of all the amendments which this Department recommends to H.R. 15931 as passed by the House. Otherwise, I would like to confine the contents of this letter to the implications of the House action in light of the President's veto of H.R. 13111.
>
> Let me express my judgment that the action of the House does not adequately respond to the objections that the President made to H.R. 13111 and that served as the basis for his veto. When examined in these terms, it is clear that the bill continues to carry the same excesses and faults that caused the President to veto this important and vital measure in the first place. Specifically, comparing the bill with each of the reasons cited by the President in his veto message, I find that it would—
>
> 1. Still add almost $900 million to the President's original budget for the Department of Health, Education, and Welfare and thereby continue the inflationary characteristics of the vetoed bill.

2. Still be the all-time high for increases over any President's budget for HEW—bar none. No previous Congress has ever added so much to the HEW appropriation for any year.

3. Still constitute by far the largest increase over the President's budget for any 1970 appropriation bill passed by the 91st Congress.

4. Continue to impose on the President large increases in mandatory formula grants programs over which the President can exercise little or no control in his management of the overall Federal budget. The bill as passed by the House carries more than $848 million in increases for mandatory formula grants without one single word of language or other authority that would give the President discretion over how and when these increases might be spent.

5. Still add large sums for what, in my opinion, are marginal or misdirected programs which need to be reevaluated or overhauled—not expanded. Many of these funds are for activities which could well be deferred until such evaluations and reforms are completed—or until inflation is checked.

6. Still add large sums that cannot be spent effectively so late in the fiscal year.

7. Continue to ignore the President's requests for new approaches and new initiatives for the future.

THE BILL CONTINUES TO BE INFLATIONARY

In his veto message, the President cited inflation as his first reason for veto. In his message, he said: "These increases are excessive in a period of serious inflationary pressure. We must draw the line and stick to it if we are to stabilize the economy." That statement was made about an increase in his original budget that added up to more than $1.2 billion. We contend that by dropping only $364 million, the House bill does not go far enough to meet the President's objection and in no way represents a "holding of the line."

Any bill that adds almost $900 million ($896 million to be exact) to the original budget request must be viewed as excessive during this critical time in the President's fight against inflation.

THE BILL TIES THE HANDS OF THE PRESIDENT BY INCREASING AMOUNTS FOR MANDATORY FORMULA GRANTS

In my opinion, this stands as the most grievous defect in the House bill. Despite the President's suggestion that this problem could be solved through the use of appropriation language giving him discretionary authority over such formula grants, the bill, as I said above, continues to force upon the President over $848 million in increases for mandatory formula grants. If he is to limit overall Federal spending, he must make offsetting reductions in other programs. With only 4½ months remaining, this places the President in an absolutely untenable position. Too much of the Federal budget is already committed to make such a large offset so late in the year.

This factor alone would make it impossible for me to recommend to the President that he accept the bill in its present form.

THE BILL STILL CARRIES TOO MUCH MONEY TO BE SPENT TOO LATE IN THE FISCAL YEAR

The President has already called our attention to what has been a traditional concern of the Congress, namely, that money not be appropriated so late in the fiscal year as to invite hasty and unwise expenditures. How often has the Congress challenged June buying by the Executive Branch? How often has the Congress cut supplemental appropriations because the money would come too late to be spent wisely? Yet, in this bill, the House seems to have turned its back on sound Congressional tradition. Unless the Senate reverses the House action, the President would stand alone as the only one who seems to advocate this kind of judgment. We have already lost almost a month since the Senate passed the last bill. This, combined with the continued rise in inflation, makes it all the more important that we pare down those portions of the bill that would result in end-of-year spending.

THE BILL CONTINUES TO ADD MONEY FOR MARGINAL PROGRAMS WHILE IGNORING THE PRESIDENT'S PRIORITIES

In his February 2 letter to the Speaker of the House, enclosed, the President proposed a compromise which would add $449.1 million to his original budget for HEW. Within this compromise were several programs for which the President expressed a willingness to accept Congressional increases in their entirety. In other instances, he proposed to meet the Congress part way. Proposals falling in this category had been weighed carefully for their merit and priority, for their inflationary impact, and in terms of whether additional money could be wisely spent between now and June 30. Except for Hill-Burton hospital construction, where the House bill comes close to adopting the President's February 2 alternatives, the action of the House brushes aside the President's compromise funding levels. The bill continues to carry large sums for school equipment, library books, and other deferrable purchases, while at the same time ignoring completely the President's request for reinstatement of two new initiatives—his request for funds to launch an experimental school program and enlarge the dropout prevention program.

RECOMMENDATION FOR SENATE ACTION

As I have already said, taken in its present form, I would have no choice but to recommend to the President that he veto H.R. 15931. Thus, I see the Senate is playing a vital role in avoiding another impasse. I hope that the Senate will be able to help the President reach his objective. I urge the Senate to take appropriate action to reduce the overall level of appropriations for this Department as proposed in H.R. 15931.

Based on statements by the President in his veto message, and based on the proposals that he made to the Congress in his letter of February 2 to the Speaker of the House, it is quite clear that the President desires to find an accommodation. There are two approaches open to the Senate, either of which I am confident, would be acceptable to the President. These are:

1. Modify H.R. 15931 so that it would reflect the proposals made by the President in his letter to the Speaker of February 2. In his letter, the President proposed amendments which provided increases over his original buget totaling $449 million. The President's proposals would result in a 1970 budget that totals $16,790,705,000. This would provide a total budget for this Department that is almost 10 percent higher than that approve by the Congress for 1969. The increases proposed by the President over the vetoed 1970 appropriation bill are as follows:

$238 million for impacted area aid

$70 million for basic grants for vocational education

$25 million for grants for education of the disadvantage under Title I of the Elementary and Secondary Education Act.

$40 million in additional funds for supplementary education services and other forms of support to elementary and secondary education

$10 million for public library services

$6 million for education of the handi-

$8.8 million for education professions development

$29.7 million for the National Institutes of Health

$10 million to accelerate the rubella vaccination program

$7 million to intensify air pollution research efforts

$4 million for treatment of alcoholis[m]

The listing of amendments enclosed [would] bring the bill into full agreement with the President's February 2 alternative.

2. The second course open to the Senate which would clearly, in my view, satisfy the President would be to include language in the bill giving the President discretionary authority over the so-called mandatory formula grants which make up such a large share of the bill. As the matter stands, the bill calls for almost $4.3 billion in mandatory formula grants.

Our enclosed list of recommended amendments includes a general provision which would, if adopted, resolve the issue.

In other words, the simple action of including this one piece of language in the bill could make it possible for the President to accept the bill. I would like to emphasize that should this course be adopted by the Congress, the President and this Department are committed to the obligation of all funds, including the so-called mandatory formula grants, to at least the levels indicated in the President's February 2 budget amendments. This, of course, includes impacted area aid.

As I have already said, this might well prove to be the quickest and simplest way to solve our problem. As I understand it, although a similar provision included in the House Committee bill was deleted on a "point of order" on the floor of the House, should such a provision be later adopted by the Senate and agreed to by House-Senate Conferees, the House rule would not permit its deletion a second time on a "point of order." In other words, if the Senate were to adopt this language, it seems to me that its chances for final approval by the Congress as a whole would be quite good.

GENERAL PROVISIONS IN H.R. 15931

There are three general provisions [carried] in the House bill which are of concern to this Department—sections 408, 409, and 410.

As you know, sections 408 and 409 are identical with provisions contained in H.R. 13111, as originally passed by the House. I would recommend that the Senate follow exactly the same course of action it followed in dealing with these provisions in H.R. 13111.

Insofar as the new section 410 of the bill is concerned, it is my belief that it may well have been born out of misunderstanding on the part of the House concerning the role and activities of the Office for Civil Rights of this Department. Let me say that it is not the role of the Office for Civil Rights to interpret the Constitution and the law. That is the responsibility of the courts. Once the courts have acted, it is the responsibility of this Department to extend a helping hand to school districts in their efforts to comply with court decisions. Because the courts have already, in many instances, decreed that "freedom of choice plans" that result in discrimination are illegal, all that section 410 can do is prevent this Department from working with and helping local school districts who are trying to comply with such court orders. Because section 410 does not appear to be consistent with actions of the courts, it could only produce an administrative nightmare for our Department. If we are to avoid the administrative chaos that this section would produce at all levels, section 410 should be deleted from the bill.

CONCLUSION

I believe, Mr. Chairman, that you are as anxious as we are to complete action on this appropriation bill. I respectfully request that the Senate modify the House bill [to] either of the two lines suggested above. [The] Department stands ready to support [and] help you to this end in every way possible.

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