Everybody is against busing -- but how do we stop it in the face of the April Burger busing decision, and other Federal court decisions which pave the way for busing from suburbs to inner cities? Here is the solution which is quick and constitutional. Tell your Senators and Congressmen you want action immediately!

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HOW TO STOP BUSING NOW!

Simple Majority Vote Of Congress Can Strip Court Jurisdiction

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DEAN MANION: What or who is responsible for the forced busing of school children in the United States today? In all parts of the country bitter opposition to the practice is reaching scandalous proportions that seriously threaten the integrity of our entire school system. If nationwide forced busing to achieve racial balance is now the law of the land, who passed the law and why is it being enforced one way in Texas, another way in California and not at all in many states of the Union?

For a definitive answer to this question I have brought to this microphone one of the most competent, widely experienced and successful practicing lawyers in our country, J. Fred Schlafly, of Alton, Illinois. Always burdened with the important concerns of his own law firm, Mr. Schlafly nevertheless finds time for sustained, professional, activated interest in the Constitutional government of our country, a virtue that is unfortunately no longer a common characteristic of our practicing legal profession.

Mr. Schlafly, we are all deeply grateful for your presence here.

MR. SCHLAFLY: Thank you, Dean Manion, it is a privilege to appear on the Manion Forum.

DEAN MANION: What is responsible for the nationwide dispute about busing?

MR. SCHLAFLY: A main purpose of our judicial system is to give certainty to the law so that the citizens know what the law is. But in the important matter of education, our Supreme Court has caused great confusion, both as to busing and as to state aid to religious schools.

J. FRED SCHLAFLY

DEAN MANION: Tell us how this confusion developed.

MR. SCHLAFLY: For many years, the Federal courts, including such revered liberal Supreme Court justices as Justice Brandeis, Chief Justice Stone and Justice Oliver Wendell Holmes, have repeatedly held that the public schools could be segregated provided they were equal. This was called the "separate but equal doctrine."

Then in 1954 an opinion by Chief Justice Warren, in the case of Brown vs. Board of Education, reversed the separate but equal doctrine under which many school districts had been operating, and held that it was a violation of the Fourteenth Amendment for a state to require segregated schools. Chief Justice Warren based his opinion on books written by black psychologist Kenneth Clark and Swedish psychologist Gunnar Myrdal, which said that segregation was psychologically damaging to both races (347 U.S. 483 at 494).

DEAN MANION: So the Brown decision had the

effect of nullifying all the State laws that required segregation—but did it go further and require the racial integration of all public schools?

MR. SCHLAFLY: Our country accepts the legal doctrine that forcible segregation deprives our citizens of equal protection of the laws. But nothing in the Brown case requires forcible integration, that is, the mixing of whites and blacks or other races in the public schools to achieve a so-called racial balance.

Nor did the Brown case attack the neighborhood school which serves the children in its neighborhood and therefore may be predominantly white or predominantly black or predominantly Mexican-American, or predominantly Puerto Rican, depending on the people living in that neighborhood.

DEAN MANION: Then how did the race-mixing requirement get started?

MR. SCHLAFLY: In 1970 some of the Federal District judges began to rule that neighborhood schools were unconstitutional if, because of the racial character of the neighborhood, such schools were nearly all white or nearly all black. In a number of southern states and in Pasadena, San Francisco, Nashville, Indianapolis, Michigan, etc., Federal District judges ordered busing of the pupils to give what they called a racial balance.

Many thought that the fairest solution was freedom-of-choice schools. This plan permitted the parents or the pupil to select the public school and required the school district to admit the students to the school so selected. However, on May 27, 1968, the Supreme Court outlawed freedom-of-choice schools in Virginia, Arkansas and Tennessee (391 U.S. 430, 443 and 451). The Court said that the freedom-of-choice school is "a device to allow resegregation of the races."

On April 20, 1971, the U.S. Supreme Court decided the two segregation cases of Swann vs. Charlotte-Mecklenburg Board of Education and Davis vs. Board of School Commissioners of Mobile County. In the Charlotte case, the Court said that, where there has been state-imposed segregation by race in the public schools, that is, a dual system of white schools and black schools, then "the remedy commanded was to dismantle dual school systems," and this may be done by busing (28 L Ed 2d 554 at 570).

In the Mobile case, the Court ruled that "neighborhood school zoning" is not "per se adequate to meet the remedial responsibilities of local boards." Because there had been segregation, the Supreme Court in effect ended the neighborhood schools in Mobile County by ordering cross-county busing and split zoning (28 L Ed 2d 580, 581).

Racial Balance Not Required

However, there is no Federal or state law saying that the public schools must have a racial balance or requiring the busing of pupils to achieve a racial balance. In fact, the very Federal Civil Rights Act under which most of the school integration cases have been filed, plainly states in Section 2000c-6:

> "...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 in order to achieve such racial balance,...."

In another section (2000-(b)) of this same Federal Civil Rights Act, it states that while students are to be assigned to public schools without regard to their race, color, religion or national origin, this "shall not mean the assignment of students to public schools in order to overcome racial imbalance."

In said Charlotte case, Chief Justice Burger discussed this Congressional prohibition against busing and said it was intended to apply only to "so-called 'de facto segregation,' where racial imbalance exists in the schools but with no showing that this racial imbalance was brought about by discriminatory action of state authorities" (28 L Ed 2d at 557).

In other words, Chief Justice Burger said Congress did not intend to prohibit busing as "a remedy for state-imposed segregation in violation of Brown case," but did intend to prohibit busing where the segregation was caused by the demographic pattern of the area served, as in the neighborhood schools.

DEAN MANION: But now, Mr. Schlafly, every Federal District judge seems to have a different

idea as to when and how busing must be carried out in his jurisdiction. How does this happen?

MR. SCHLAFLY: On August 31, Chief Justice Burger said that the Federal judges have been misreading his Court's April 20 ruling if they assumed that it required a racial balance in every school. He said that "the Constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole."

On August 3, President Nixon denounced a busing plan drawn up for the city of Austin, Texas, saying:

> "I am against busing as that term is commonly used in school desegregation cases. I have consistently opposed the busing of our nation's school children to achieve racial balance, and I am opposed to the busing of children simply for the sake of busing."

One week later, the White House warned that government officials "who are not responsive will find themselves quite possibly in assignments other than the Federal Government."

The result of these conflicting statements from the Federal courts, from Chief Justice Burger, and from the White House, is that the local school boards do not know what to do. Thus, in San Francisco, the Chinese community is strenuously resisting having its children taken from their neighborhood schools and bused into either the black community or the white community. But the Chinese petition to prevent busing was denied by Supreme Court Justice Douglas on August 25. Likewise, the American Indians are objecting to the busing of their children to white schools.

To add to the confusion, many of the Federal courts are now holding that both the neighborhood school, and the "track system" of assigning pupils according to mental ability, are unconstitutional for the alleged reason they are psychologically damaging. Of course, the substance of both have been a part of our American educational system ever since our country was founded.

More confusion was created by the Supreme Court when on June 28 it decided that it was constitutional to give Federal or state aid to religious colleges but was unconstitutional if this state aid is given to religious high schools or religious grade schools (Lemon vs. Kurtzman, 29 L Ed 2d 745).

Dissenting Justice Byron White points out that this is a distinction without a difference. He charges that in "refusing support for students attending parochial schools simply because in that setting they are also being instructed in the tenets of the faith they are constitutionally free to practice," the Supreme Court is ignoring the free exercise of religion clause of the Constitution itself (29 L Ed 2d at 785).

Since the Supreme Court had previously upheld state-furnished transportation, books and school lunches to parochial schools (Everson vs. Board of Education, 330 U.S. 1 and Board of Education vs. Allen, 392 U.S. 236) and direct state aid to hospitals run by religious orders (Bradfield vs. Roberts, 175 U.S. 291) and now direct state aid to religious colleges (29 L Ed 2d 790), it is illogical and judicial wordsmithing for a majority of the Supreme Court to say that state aid for only secular programs at parochial schools is, in the Court's words, "A step that could lead to such establishment (of religion) and hence offends the First Amendment." (Lemon vs. Kurtzman, 29 L Ed 2d at 755.)

Amendment Route Too Slow

DEAN MANION: Will a Constitutional Amendment be required to get the schools out of this mess?

MR. SCHLAFLY: That process would take years! Curbing the runaway Federal court by constitutional amendment is a very slow process. Although the Federal courts can and do change constitutional law by a majority vote of only one judge, any amendment to the United States Constitution must receive a two-thirds vote in the Senate and again in the House and then be approved by three-fourths of the State Legislatures.

DEAN MANION: What then is the way out of this confusion?

MR. SCHLAFLY: Fortunately, there is a very simple, quick solution to the educational chaos caused by these Federal court decisions. This solution does not require a constitutional amend-

ment but only a bare majority vote in Congress. The solution is for Congress to pass simple amendments to Title 28 of the United States Code which might read as follows:

Transportation of pupils and neighborhood schools

The Federal courts shall not have jurisdiction to require the transportation of pupils or students from one school to another or from one school district to another in order to achieve a racial balance, or to change a school's racial enrollment when it is characteristic of the neighborhood served by the school.

Assignment of students according to mental ability

The Federal courts shall not have jurisdiction to forbid the assignment of students based on mental ability.

Payment of public funds to private or religious schools

The Federal courts shall not have jurisdiction to enjoin or restrain the payment of public funds to aid private or religious schools or to aid students attending private or religious schools.

Section 2 of Article III of the United States Constitution provides that, except in a very few cases, such as those affecting ambassadors, the Federal courts shall have only such jurisdiction as "Congress shall make."

In the 1930's the liberal members of Congress concluded that the Federal courts were too often influenced by their own prejudices to exercise jurisdiction over labor strikes, public utility rates, and state taxes. They passed simple laws known as the Norris-LaGuardia Act (29 U.S. Code #107) and the Hiram Johnson Acts (28 U.S. Code #1341 and #1342), which provided that the Federal courts did not have jurisdiction to act in these fields. These laws have worked well, and no one has ever suggested that they be repealed.

Similar simple laws, such as I suggest, would prevent the Federal courts from destroying the neighborhood schools by busing and from blocking state aid to private and parochial schools.

DEAN MANION: Thank you, Mr. Fred Schlafly, for this clear and concise analysis of the forced school busing problem, and for your sensible suggestion for settling it promptly and permanently in the terms of the Constitution of the United States itself.

My friends, your own Congressman and Senators may be among the many who have proposed a constitutional amendment to end forced school busing. Mr. Schlafly has shown that such a prolonged process is not necessary. He has told us how the Congress, now in session, can end school busing now by responding promptly to your indignant protest. Wherever mass protests against busing are taking place, do something constructive; distribute copies of this broadcast which tells the protesters what they can do to stop it—there and everywhere.

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