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Nos. 83-2308, 83-2402, 83-2445

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant

v.

BOARD OF EDUCATION OF THE CITY OF CHICAGO,

Defendant-Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

REPLY BRIEF FOR THE UNITED STATES

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REPLY BRIEF FOR THE UNITED STATES

INTRODUCTION

Our principal brief addressed most of the relevant contentions submitted by the Board in its brief as appellee. In this reply brief, we make four points in response to the Board's arguments: (1) the Board, and the district court as well, extrapolate more from ¶15.1 of the decree than its language, its history, or any reasonable interpretation supports; (2) the orders on appeal are a substantial and unjustified incursion on the discretionary powers of the Executive Branch; (3) Congress' enactment of H.J. Res. 338 (vetoed on August 13, 1983) provides no support for the Board's reading of the consent decree; and (4) the Board's claimed entitlement to $14.6 million from the United States now (with the prospect of many times that amount later) ignores funds it has received to date and, at bottom, assumes that Chicago has a right to all the funds it says it needs, notwithstanding statutory strictures and the needs of all other school districts and other applicants for Department of Education funds.

ARGUMENT

A. The Board and the District Court Err in Interpreting ¶15.1

The central issue before this Court is the meaning of ¶15.1 of the consent decree. The crux of the violation found by the district court is that the policy decisions of the Executive Branch to restructure federal financial assistance programs made certain funds unavailable to the Chicago desegregation plan. However, the Executive Branch of the United States, in promising to make "every good faith effort" to find and provide "available" financial resources for the Chicago desegregation plan, did not agree (1) to refrain from making or supporting legislative proposals which could adversely affect the amount of direct desegregation grants made to Chicago, (2) to guarantee that every discretionary policy decision affecting federal education assistance programs would be tailored to insuring maximum assistance to Chicago at the expense of every other potential recipient and every other educational priority, or (3) to convert grant programs designed to provide limited support for projects nationwide into a special grant program for Chicago alone, in contravention of congressional intent and binding regulations requiring grant competition.

The Board urges (Br. 17 n. *, 18, 21 n. **, 42, 46) that it would not have settled the case or agreed to implement a desegregation plan but for precisely such a promise and suggests that the United States willingly made that promise in order to avoid litigation of its claims.

The Board's brief proceeds as if the United States, rather than Chicago, was concerned about a costly and lengthy lawsuit, "adverse publicity and * * * the collateral effects of adjudicated guilt" (United States v. City of Jackson, 519 F.2d 1147, 1152 n.9 (5th cir. 1975)), ineligibility for financial assistance, and the substantial risk of an adverse ruling after trial. These risks, however, were solely the Board's as the defendant in this case; moreover, if we had prevailed after a trial, the decree could not properly have ordered the United States to finance Chicago's desegregation plan in whole or in part. Thus, the Board's argument that it extracted from the Executive Branch a voluntary agreement to a substantial monetary committment in exchange for not having to litigate the case is inconsistent with the circumstances of this litigation.[1/] Moreover, the details of

1/ The Board nowhere suggests what might cause the Attorney General, who regularly tries lengthy, complex and costly lawsuits, to make the broad, open-ended and unprecedented commitment that the Board and the district court find in ¶ 15.1. It is hard to imagine why the Attorney General would agree to the substantial assumption of the Board's financial responsibility for compliance with the Constitution. Such an agreement would be at odds with the respective legal rights and responsibilities of the Executive Branch and local school districts and could inappropriately create expectations inimical to civil rights enforcement.

the desegregation plan were not dictated by the consent decree. Rather, the Board retained the right, which it valued highly,[2/] to devise the specific components of the plan (U.S. App. 12-13). Thus, the benefits to the Board from the consent decree were substantial, apart from any additional benefit gained from ¶15.1.

The Board errs in contending (B. 12) that the United States' interpretation of ¶15.1 renders that provision meaningless. On the contrary, the Board has benefitted significantly from the consent decree as a whole and ¶15.1 in particular. Paragraph 15.1 led to the immediate award of a fiscal year 1980 grant to the Board under Title IV of the 1964 Civil Rights Act, the largest race desegregation assistance grant made to a school district that year (U.S. Br. 9-10). In fiscal year 1981, the Board again received the largest race desegregation assistance grant (U.S. Br. 11). In 1980, prior to the entry of the consent decree, the Board had been found ineligible for a grant under ESAA, but, subsequent to the decree, it received a grant of $1.8 million.[3/] These specific awards were not required by ¶15.1, but they reflected the effect of resolving the issue of the Board's compliance with Title VI of the Civil Rights Act and thereby making Chicago again eligible for federal funding, and of committing the Executive

2/ See September 24, 1980 Tr. at 19-20.

3/ Contrary to the Board's assertion (Br. 10), the Title IV and ESAA grants were made before the district court approved the Board's plan. The size of these awards is particularly noteworthy in this light.

Branch to give close and sympathetic consideration to the Board's grant applications. Paragraph 15.1 also reflects the Executive Branch's commitment to provide technical assistance in identifying resources for activities under the desegregation plan, to assist in preparing grant applications, to coordinate review of those applications and to insure that they received timely and fair consideration (see Bd. App. 72-81). This obligation of the Executive Branch has been fully discharged.

The Board argues (Br. 18) that neither the "good faith effort" nor "available" language in ¶15.1 limits the funding obligations of the Executive Branch. Instead, the Board claims (Br. 18) that these words simply reflect the fact that Congress and not the Executive Branch controls the federal purse strings. The word "available," according to the Board (Br. 17), means such funds "that are or might be made subject to a party's control" (emphasis added). According to the Board, therefore (Br. 18-19), ¶15.1 constituted an agreement that the Executive Branch would take whatever steps might be necessary, including legislative initiatives, to bring sufficient funds under its control to pay for whatever portions of the Chicago desegregation plan the Board says it cannot. But ¶15.1 does not say that. Nor does anything in the negotiating history submitted by the United States support the Board's view.

The word "available" in ¶15.1 is necessarily a word of limitation and the additional language requiring "every good faith effort" to find and provide "every available" source of federal assistance cannot change that (See U.S. Br. 19).

The Board asserts (Br. 1) that the consent decree puts Chicago in a position enjoyed by no other school district in the country. Chicago, it is claimed (Br. 36), was given a competitive edge over every other school district in the distribution of federal financial assistance. It is to be given not only its fair share, but the lion's share, if necessary to fund its desegregation plan fully (Br. 34-37). Chicago, alone, is to be insulated from any change in federal assistance programs (Br. 18-19).[4/]

According to the Board (Br. 18-19), the decree binds the Executive Branch to seek alternative modes of financing for the Chicago plan if Congress, with or without the urging of the Executive Branch, has made "other adequate funds" unavailable.

4/ We submit that such an extraordinary commitment by the government would not have gone unremarked. But the negotiating history is silent (See Bd. Br. 23 n.**). The fact that other existing funding sources besides ESAA were discussed in the negotiations does not support the Board's view that the Executive Branch was promising to make Chicago whole for changes that might occur in any of the federal assistance programs. The Board further suggests (*ibid.*) that the negotiating history evidence is incomplete and thus unreliable, but it offered none of its own.

It is likewise significant that no mention was made of such a broad-ranging commitment at the time the consent decree was presented to the court on September 24, 1980 (see U.S. Br. 33-35).

This the Executive must do by proposing reprogramming, reappropriation or new legislation. Here again, the Board has not described any circumstance which would have induced the Attorney General to make such a bargain and, indeed, he did not do so. The fact that both parties expected that Chicago would get an ESAA grant after the signing of the decree does not, as the Board claims (Br. 24), "demonstrate[] the mutual intent of the parties that the United States, as part of its commitment, would provide substantial funding for the Plan." All it shows is that the parties at the time did not expect a change in ESAA. Indeed, the Board, the United States and the district court recognized some time after the decree was entered that, even with respect to ESAA, ¶15.1 did not guarantee Chicago favorable action on its funding application. (See U.S. App. 38-39).[5/]

In support of its interpretation of ¶15.1, the Board (Br. 20-22) cites cases in which consent decrees, unlike the one at issue here, spelled out very specific obligations undertaken by government defendants to seek legislation or to take other very specific action.[6/] In Brewster v. Dukakis, 675 F.2d 1, 4 n.3

5/ The Board's reliance (Br. 25) on a Department of Education memorandum (Bd. App. 72) issued shortly after the decree was entered is misplaced. The language in that memorandum -- that the Department ought to provide "the maximum amount of financial and technical assistance that [it] can provide" -- does not say that the Department obligated itself to give preference to Chicago over other school districts or other educational priorities.

6/ The Board does not discuss cases cited in our opening brief (p. 18) which demonstrate that a "best efforts" promise "indicates a degree of discretion" and is distinguishable from a binding commitment. St. Louis Union Trust Co. v. United States, 617 F.2d 1293, 1300 (8th Cir. 1980); Western Geophysical Co. v. Bolt Associates, 584 F.2d 1164, 1171 (2d Cir. 1978).

(1st Cir. 1982), for example, the defendants promised the "submission of appropriate budget requests * * *; allocation of sufficient funds * * *; full allocation of funds * * *; [and] allotments of appropriated funds as needed * * *." Similarly, in New York State Ass'n for Retarded Children v. Carey, 631 F.2d 162, 163 (2d Cir. 1980), defendants promised much more than a "good faith effort" to find and provide "available" funds. Rather, they agreed to "take all steps necessary to ensure the full and timely financing of this judgment, including, if necessary, submission of appropriate budget requests to the legislature." In Evans v. Washington, 459 F. Supp. 483, 487 (D.D.C. 1978), as well, the promises to seek appropriations, reprogramming and reallocation of funds were spelled out in the consent decree itself. Ricci v. Okin, 537 F. Supp. 817 (D. Mass. 1982), also involved an absolute rather than a "good faith effort" obligation to maintain staffing levels at an institution for the mentally retarded adequate to meet constitutionally and statutorily mandated standards for care and treatment. 7/

7/ The other cases cited by the Board are also inapposite. Delaware Valley Citizens' Council v. Commonwealth of Pennsylvania, 678 F.2d 470 (3d Cir. 1982), cert. denied, 51 U.S.L.W. 3339 (U.S. Nov. 1, 1982), did not involve a "good faith effort" promise on the part of Executive officials as here, but an absolute obligation which the court found binding on the Commonwealth as a whole. Thus, it was the state legislature's refusal to allow expenditure of funds to meet the consent decree obligation that was deemed to violate the decree. In Geisser v. United States, 513 F.2d 862 (5th Cir. 1975), cert. denied, 450 U.S. 1031 (1981)

(cont'd)

B. <u>The District Court Exceeded Its Lawful Authority to Enforce ¶15.1</u>

We have urged that the district court's order impermissibly intrudes on the power and discretion of the Executive Branch and, thus, violates the doctrine of separation of powers. The Board, not really disputing that the court's action is an incursion into the power of the Executive, attempts to deflect our argument in various ways.

First, the Board points out (Br. 41, 46) that the courts have plenary power to enforce their consent decrees. But we do not dispute the power of the judiciary to enforce the promise that the United States made in this decree. Our quarrel, rather,

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7/ (cont'd)

and 627 F.2d 745 (5th Cir. 1980), cert. denied, 450 U.S. 1031 (1981), the court was enforcing a very specific promise by the Executive to use its best efforts to see that a cooperating witness received an early parole and that she not be deported to France or Switzerland. The court found an outright failure to comply in the Department of Justice's refusal to inform either the Parole Board or the Department of State of the promise made to the witness, in order that they might take it into account in acting on parole and extradition decisions within their control, 513 F.2d at 869. The court'ultimately concluded, however, that once the government had pled the witness' case in very strong terms to the Swiss government, "best efforts" did not require the United States to violate its extradition treaty with Switzerland in order to comply with the agreement, 627 F.2d at 755. <u>Bloor</u> v. <u>Falstaff Brewing Corp.</u>, 601 F.2d 609 (2d Cir. 1979) arises in a much different context. The court there required a profit-making business enterprise to live up to past contractual obligations which impinged on its present ability to maximize profits. Here, however, the court has found that the Executive Branch agreed to sacrifice the interests of many other beneficiaries of federal assistance in order to settle a single lawsuit.

is with the court's misreading of the promise and its order purporting to enforce the decree in a way that exceeded the bounds of judicial authority. The district court has read into ¶15.1 something that the Executive Branch did not agree to do and something the courts lack unilateral authority to impose upon it.

Second, the Board urges (Br. 13-14, 41) that the court's order carefully avoids any claim on the prerogative of Congress to appropriate funds. But our argument is rather with the encroachment on the power of the Executive Branch (a) to propose the legislation it deems "necessary and expedient" and (b) to exercise the lawful discretion conferred by Congress.

Third, the Board asserts (Br. 41, 42-44) that, by agreeing to ¶15.1, the Executive Branch agreed to find it "necessary and expedient" to propose special legislation for Chicago in the event that other available funds were inadequate to cover all the costs of the plan the Board itself could not pay (Br. 18-19). Furthermore, the Board claims that the Executive agreed to exercise its discretion to give Chicago the competitive edge in the distribution of all federal financial assistance (Br. 34-35). Therefore, the Board reasons (Br. 44-46), ordering the Executive to take such actions now is a commonplace judicial action enforcing a contractual agreement. This theory, of course, stands or falls with the threshold question of the meaning of the decree, which we have already addressed.

Finally, the Board claims (Br. 16, 38-40) that the Executive Branch retains the "maximum permissible discretion" under the court's order because it is free to select, from among the various prescribed alternatives, a means to comply with the court's order. Thus, it is argued, the United States need not seek special legislation for Chicago unless it freely chooses to do so. However, as we have established (U.S. Br. 38-46), there are not sufficient funds presently "available" to satisfy the $14.6 million liability judgment of the district court.

C. Congress' Passage of H.J. Res. 338 Does Not Support the Board's Reading of ¶15.1

The Board errs in claiming (Br. 32 n. *, 36-37 n. **, 40-41 n. ***) that the passage of H.J. Res. 338 demonstrates congressional concurrence in its interpretation of the consent decree.[8/] In fact, the legislative history establishes that the bill was intended to provide a means for the Secretary

8/ On August 1, 1983, Congress passed H.J. Res. 338, providing as follows (129 Cong. Rec. H6127 (daily ed. August 1, 1983)):

> To enable the Secretary of Education to comply with the order issued in U.S. District Court in the Case of the United States of America v. the Board of Education for the City of Chicago (80 C 5124) there is hereby appropriated $20,000,000 to be derived by transfer from available balances in the current appropriation for 'Guaranteed student loans'.

The President vetoed the Resolution on August 13, 1983. His veto message is attached to this brief.

of Education to comply with the district court's June 30 order in order to ameliorate the harm to education programs across the country caused by the freezing of funds.

The legislative history of H.J. Res. 338 is very brief. Only two members of Congress (Congressmen Yates and Conte) discussed the intent of the legislation. The full texts of their statements are attached to this brief. Congressman Yates, who introduced the legislation, stated that it was intended to permit the carrying out of the agreement between the Board and the United States "in accordance with" the district court's order (129 Cong. Rec. H5990 (daily ed. July 29, 1983)). Congressman Conte, the ranking minority member of the House Appropriations Committee, cautioned that congressional action on H.J. Res. 338 should not imply "that Congress has taken a position, one way or another, on this case" (ibid.). He was willing to support the legislation, even though the June 30 order had not yet been reviewed on appeal, only in order "to relieve the situation created by the impoundment" of funds by the district court (ibid.). In his view, the Department of Education was to release the $20 million to Chicago "only upon receiving assurance that the judicially imposed impoundment of discretionary funds for elementary and secondary education will be lifted" (ibid.).[9/] Congressman Yates responded that

9/ Congressman Conte found even "[m]ore disturbing" the fact that "the district court judge is said to be considering figures on the order of $250 million, not just $20 million as a final settlement," 129 Cong. Rec. H5991 (daily ed. July 29, 1983).

the bill was indeed intended to, and he "hoped and expected" it would, "persuade the Court to make available funds for use in local communities" that would have received those funds but for the June 30 freeze order (id. at 5990-5991).

D. The United States Has Complied with ¶15.1 as Properly Interpreted

Finally, this Court need not decide whether the government would have violated the decree if it had refused Chicago a single penny in federal assistance because, as we have established, Chicago has received millions of dollars in direct and indirect aid for its desegregation plan. Thus, the Board is factually wrong in stating (Br. 30) that the United States has "ignore[d] the Board in disbursing all available money and actively s[ought] to render all possible sources of funding unavailable." 10/ The Board argues, nevertheless (Br. 30-34), that only specific desegregation assistance may be considered in evaluating the

10/ The Board erroneously accuses the Executive Branch (Br. 10, 26, 27) of deliberately undermining its obligation under the consent decree. The Executive Branch and Congress have taken actions that may have had the effect of reducing the availability of direct grants made to local school districts specifically for desegregation. These actions include the consolidation of ESAA with other categorical grant programs, the reduction of funding under Title IV and the decision to use these reduced funds for grants to state education agencies and desegregation assistance centers. These actions were based on broad policy decisions concerning the extent and nature of federal assistance for elementary and secondary education and the most effective way to target that assistance. The consolidation of programs results in significant benefits for school districts, including greater flexibility for using federal assistance and reduced administrative costs. See 20 U.S.C. 3801, the "Declaration of Policy" in the Education Consolidation and Improvement Act of 1981 (ECIA), Sec. 552 of Public Law 97-35.

government's compliance.[11/] The Board claims (Br. 31-32) it would have received other aid in any event and that such funds cannot be counted toward the incremental costs of desegregation.

However, the Board would have been ineligible for the ESAA and Title IV grants it received in fiscal years 1980 and 1981, or any other federal assistance, in the absence of the consent decree or an acceptable desegregation plan. In fiscal year 1982, the Board received $6.3 million under Chapter 2 of ECIA, almost double what it had received under the antecedent programs to Chapter 2 (U.S. Br. 13). All of those funds are, by statute, available for desegregation expenses at the Board's discretion. As we have demonstrated (U.S. Br. 37 n. 32), many of the costs designated by the Board as desegregation expenses would be incurred regardless of whether the Board was implementing its plan. For example, the Board considers the rehabilitation of school buildings in racially isolated areas a desegregation cost even though it would admittedly have to undertake such repairs in any event (June 22, 1983 Tr. 49). Similarly, the assessments of learning disabled and mentally retarded children

11/ The Board's argument is inconsistent with its position (Br. 9; Bd. App. 58-59, 60-62, 66) that it expected to receive under the decree federal assistance from sources other than the Department of Education, the only federal agency empowered to afford specific desegregation assistance.

to be undertaken as part of the educational component of the plan, may be financed with funds received under the Education of All Handicapped Children Act (U.S. App. 173).[12/]

The Board does not deny that it has received funds such as those described immediately above, as well as direct desegregation assistance, since the decree was entered (see Br. 9). But it discounts receipt of all these monies ("available," applied for, and granted) as not enough.

The Board also claims and the district court has determined (U.S. Br. App. 27) that the United States has failed to provide money currently "available" for the Chicago desegregation plan under Title IV, the Secretary's Discretionary Fund and the Special Programs and Populations Fund. The district court did not determine how much of those monies the United States should have made a "good faith effort" to provide under the consent decree. Rather, the court and the Board apparently conclude that the entire remaining budgets of these programs should be paid to Chicago to compensate for the restructuring of financial assistance programs and the alleged resulting harm to Chicago. This is the only rationale for Paragraph 3 of the court's order restraining the

12/ The Board has pointed to nothing in the federal grant programs, such as those for compensatory or vocational education, which would preclude the use of such funds for those purposes within the context of the desegregation plan, thereby promoting multiple ends.

distribution of these funds to other grantees.[13/] The Board's position ignores the fact that there are many worthwhile grantees and programs which the Secretary intended to fund and which Congress fully expected and intended to be funded. There can be no other competing "obligations," in the Board's view, unless actual contracts have been signed (Br. 20 n. *).

The Board has not established its entitlement to more Title IV funds than it has already received. The government has made available Title IV assistance to the Board both by way of direct grants and, currently, through the state education agency and desegregation assistance centers. Nothing in the decree guaranteed Chicago a direct Title IV grant.

The Board's argument with respect to Title IV proceeds as follows (Br. 35-36): (1) Congress has appropriated $24 million for Title IV; (2) the statute would permit funding of the Board's in-service training and staff development programs (although the Board fails to specify the cost of these programs); (3) the statutory and regulatory requirement of grant competition obligates the Secretary only to consider other grant applications but

13/ The Board does not, and, of course, could not claim direct entitlement to the funds for programs, other than Title IV and the Discretionary Fund, in the Special Programs and Populations Fund (such as Aid to the Virgin Islands). It merely contends that the Secretary should ignore the intended beneficiaries of all of these programs, reprogram the money into Title IV and give it all to Chicago.

not to act favorably upon them; and (4) therefore, there is no impediment to allocating all or most of the current Title IV appropriation to Chicago.

The consent decree does not, either by its terms or by reasonable implication, provide that Chicago should receive all or most of the moneys appropriated for Title IV, to the detriment of every other school district in the country. The Board does not state precisely what it thinks is its due under Title IV, but merely concludes that all of the congressional appropriation under the statute is available to satisfy the consent decree obligation. This Court should not sanction such a departure from the intent of Congress that nationwide needs be met from these funds through grants to desegregation assistance centers and state education agencies in accord with criteria set forth in the statute and regulations.

The Board's argument with respect to the Secretary of Education's Discretionary Fund is much the same as that with respect to Title IV (Br. 35-36) -- that there are millions appropriated, some of the components of the Chicago plan are consistent with the statutory purposes, and the consent decree overrides any competition requirement. Again, the Board fails to specify how much of the Discretionary Fund it deems it is entitled to because of the consent decree.[14/]

14/ However, the Board has submitted two grant applications for the Discretionary Fund competition announced by the Secretary on March 30, one for $9 million, the other $13 million. As the Board recognizes (Br. 35), only $9 million remains in the Discretionary Fund for fiscal 1983.

Last, the Board argues (Br. 36 n. **) that some $11 million in the Special Programs and Populations account is available to Chicago because no strictly legal impediment prevents the Secretary from reprogramming these funds into Title IV and providing them to the Board.[15/] However, as we have established (U.S. Br. 40-41), there are use restrictions for Title IV moneys which cannot be ignored, and the Board has failed to demonstrate that it can use the millions of dollars it is now demanding be reprogrammed into Title IV, consistently with the limited purposes permitted by the statute.

Except for pressing the general theme that the consent decree should override any other policy consideration (see, *e.g.*, Br. 36), the Board offers no rationale for ignoring the purposes Congress intended these monies to fund. As we have discussed at pp. 11-13, *supra*, congressional passage of H.J. Res. 338 does not evidence a congressional intent that the Executive Branch pay monies to Chicago in derogation of other important congressionally-created programs. Rather it demonstrates a congressional concern to alleviate the harm caused by the district court's order denying

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15/ The Comptroller General decisions cited by the Board (Br. 36 n. **) indicate that restrictions on appropriations are not legally binding if they appear only in congressional committee reports and not in the appropriations acts themselves. However, these decisions also recognize that these directives appearing only in committee reports cannot be freely ignored but rather establish a "practical duty" on agencies to comply with them. *Matter of LTV Aerospace Corp.*, 55 Comp. Gen. 307, 325-26 (1975). The Executive Branch did not intend in ¶15.1 to obligate itself to ignore such congressional directives in order to make funds specially available to the Board.

funds to other worthy grantees. Again, the crux of the matter is whether the consent decree obligated the Executive Branch to make funds available for Chicago's desegregation plan which are otherwise designated, if not specifically mandated, for other purposes. Paragraph 15.1 did not make such a promise.

CONCLUSION

This Court should reverse the orders of the district court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing brief were hand delivered to counsel for the appellee and one copy was served by first class mail on other counsel as indicated in the attached list, this 19th day of August 1983.

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THE WHITE HOUSE

Office of the Press Secretary
(El Paso, Texas)

For Immediate Release August 13, 1982

TO THE HOUSE OF REPRESENTATIVES:

I am returning herewith without my approval H.J. Res. 338. This bill was originally included in the 1983 Supplemental Appropriation bill, which I recently signed (P.L. 98-63), but was separately passed because it was inadvertently omitted from the enrolled version of that bill. Normally such bills passed as a result of enrollment errors are signed as a matter of course. I am taking this unusual action because of the extraordinarily important constitutional principles raised by this particular measure.

H.J. Res. 338 appropriates $20 million for the purpose of providing a source of funds from which the Secretary of Education could comply with the June 30, 1983 order issued in United States v. Board of Education of the City of Chicago, No. 80C5124 (N.D. Ill.), if the order is upheld on appeal. The case was brought by the United States to desegregate the Chicago school system. The court ordered the United States to provide a minimum of $14.6 million and froze more than $250 million appropriated by Congress for other educational programs in order to meet expenses incurred by the Chicago Board of Education in carrying out its constitutional responsibilities to desegregate its school system. The court enjoined the Department of Education from providing grants to hundreds of other worthy grantees under several programs of national significance, including grants intended to facilitate local desegregation efforts and others intended to follow up on the report of the National Commission on Excellence in Education.

I well understand the reasons motivating the Congress to pass this legislation. Under the order of the court in Chicago, other education programs throughout the country were denied the funding they rightfully expected to receive. The Chicago court's ostensible purpose in issuing this order was to provide a source of funds for the implementation of its decree. Congress hoped by the passage of this legislation to induce the court to release the funds that were impounded by the court. But I believe that the better course is to seek swift reversal of the district court's order.

This veto is not premised on a desire to protect the Federal budget. It is based upon my conviction that the Constitution and its process of separated powers and checks and balances does not permit the judiciary to determine spending priorities or to reallocate funds appropriated by Congress. Those are exclusively the function of the Legislative and Executive branches, and the use of judicial decrees to assume such powers raises problems of profound constitutional significance.

If finally ordered to pay additioanl funds to the Board of Educatio of the City of Chicago, the Federal government will of course do so. It is inappropriate, however, for a court to withhold millions of dollars worth of unrelated and necessary education programs to enforce its orders.

Under these circumstances, I must reluctantly veto this bill.

/s/ RONALD REAGAN

THE WHITE HOUSE

August 13, 1983

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1982: *Provided*, That the amount of the increase in any grant which a local educational agency in any State shall be eligible to receive by reason of the application of this paragraph shall be determined on a pro rata basis.

It is the intention of the Congress that for each fiscal year ending prior to September 30, 1987, an additional amount will be appropriated, as necessary, for the payment of grants to local educational agencies in all States subject to the provisions of the previous paragraph in order to increase the amount for local educational agencies in each such State for each such fiscal year to the amount determined for that State for fiscal year 1982.

MOTION OFFERED BY MR. WHITTEN

Mr. WHITTEN. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. WHITTEN moves that the House recede from its disagreement to the amendment of the Senate numbered 145 and concur therein with an amendment, as follows: In lieu of the matter inserted by said amendment, insert the following:

ELEMENTARY AND SECONDARY EDUCATION

For an additional amount for subpart 1 of part A of title I of the Elementary and Secondary Education Act of 1965, such sums as may be necessary but not to exceed $40,000,000, to remain available until September 30, 1984, to be available for the payment of grants to local educational agencies located in a State in which the aggregate amount of grants determined for such agencies from amounts appropriated for fiscal year 1983 prior to the date of enactment of this Act is less than 95 percent of the amount of the grants for that State from amounts appropriated for fiscal year 1982 by reason of the application of the 1980 Census data in order to increase the amount for local educational agencies in each such State to the amount determined for that State for fiscal year 1982: *Provided*, That the amount of the increase in any grant which a local educational agency in any State shall be eligible to receive by reason of the application of this paragraph shall be determined on a pro rata basis.

Mr. CONTE (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Mississippi (Mr. WHITTEN).

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will designate the next amendment in disagreement.

Senate amendment No. 146 reads as follows:

Senate amendment No. 146: Page 40, after line 9, insert:

STUDENT FINANCIAL ASSISTANCE

For an additional amount for subpart 2 of part A of title IV of the Higher Education Act of 1965, relating to Supplemental Educational Opportunity Grants, $4,000,000: *Provided*, That, notwithstanding section 413D(b)(1)(B)(ii) of the Higher Education Act of 1965 and section 10 of the Student Financial Assistance Technical Amendments Act of 1982, funds appropriated under this heading and any funds appropriated for fiscal year 1983 for such subpart 2 that are not obligated or committed for the fiscal year 1983 shall be allocated in a manner designed to ensure that all eligible institutions receive a minimum funding level based upon a uniform State percentage for such fiscal year.

MOTION OFFERED BY MR. YATES

Mr. YATES. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. YATES moves that the House recede from its disagreement to the amendment of the Senate numbered 146 and concur therein with an amendment, as follows: In lieu of the matter inserted by said amendment, insert the following:

STUDENT FINANCIAL ASSISTANCE

Notwithstanding section 413 D(b)(1)(B)(ii) of the Higher Education Act of 1965 and section 10 of the Student Financial Assistance Technical Amendments Act of 1982, funds appropriated under this heading and any funds appropriated for fiscal year 1983 for subpart 2 of part A of title IV of the Higher Education Act of 1965 that are not obligated or committed for the fiscal year 1983 shall be allocated in a manner designed to ensure that all eligible institutions receive a minimum funding level based upon a uniform State percentage for such fiscal year.

Mr. YATES (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

(Mr. CONTE asked and was given permission to revise and extend his remarks.)

Mr. CONTE. Mr. Speaker, I am concerned with the amendment offered by the gentleman from Illinois. What he addresses is indeed a serious problem. A district court judge has prohibited expenditure of discretionary funds in elementary and secondary education as a result of a finding that the Department has not complied with a 1980 consent decree in which the Government agreed to provide assistance to desegregation efforts in the city of Chicago. That freeze on expenditures is causing problems throughout the country for programs like title IV, "Civil Rights Training," where funds have been held up.

But what we are getting into here is a district court case, which has not yet had the appeal process completed, and on which the Department of Education has not yet communicated its position to Congress. More disturbing, the district court judge is said to be considering figures on the order of $250 million, not just $20 million as a final settlement. I would not want, by this action here, to have it said that Congress has taken a position, one way or another, on this case. I want the distinguished chairman of the Interior Committee to know that I will accept his amendment to relieve the situation created by the impoundment of funds but I do so on one condition. The Department of Education should release these funds only upon receiving assurance that the judicially imposed impoundment of discretionary funds for elementary and secondary education will be lifted. Otherwise, the States and cities affected by the judge's order will get no relief from this amendment, and it is my intention, in accepting this amendment, that they do get that relief concomitant with the relief provided to the Chicago school system.

I would also say to the gentleman that if this situation requires any further resolution, the way it should be resolved is through the reauthorization of the Emergency School Assistance Act. As the Members will recall, this reauthorization has passed the House, on suspension, and is pending in the Senate. Any further action on this situation in the Appropriations Committee should depend upon that reauthorization. There are many other cities whose desegregation plans have been thrown into disarray, and it is not fair that one city should receive special treatment, at least prior to a final disposition of this case.

(Mr. YATES asked and was given permission to revise and extend his remarks.)

Mr. YATES. Mr. Speaker, approving this amendment will be possible to begin carrying out the agreement between the board of education and the Federal Government in accordance with the order of the Court in the case of the *United States of America* v. *Board of Education for the City of Chicago*, No. 80 C 5124 (N.D. Ill.). The amendment provides funds to carryout that agreement. It is hoped and expected it will also free up funds for distribution from U.S. Department of Education sources, including the Secretary of Education's discretionary fund and the Department's special programs and populations fund, amounts which have not been obligated because of restrictions imposed on the Department by the Court.

This action will allow funds restricted by the Court to be distributed to school systems which would have received certain grants had the Court not acted. For example, Congressman BRUCE MORRISON of Connecticut has informed me that earlier this year, the U.S. Department of Education informally notified the New Haven, Conn., School Department that it would receive, for the 1983-84 school year, a Follow Through grant in the same amount—$173,713—as the previous year. Formal notification was to follow in June. However, because of the Court's actions, the Follow Through grant for New Haven has been cut to $21,714. Follow Through grants for 76 other school systems are similarly affected.

In addition, I am informed that certain State block grant program funds authorized under chapter 2 of the Education Consolidation and Improvement Act also are affected by the Court's decision. It is our intention that this amendment will persuade the Court to make available funds for use in local communities.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. YATES).

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will designate the next amendment in disagreement.

Senate amendment No. 148 reads as follows:

Senate amendment No. 148: Page 40, after line 18, insert:

FACILITIES DEVELOPMENT

HEALTH RESOURCES AND SERVICES ADMINISTRATION

HEALTH RESOURCES AND SERVICES

For an additional amount for "Health resources and services" for the remodeling and expansion of an existing academic health center library in the Pacific Northwest under section 720(A)(1) of the Public Health Service Act, $14,500,000, to remain available until expended; and notwithstanding any other provision of this or any other Act, such amount shall be made available without regard to the provisions of sections 702(b) and 722(a)(1) of the Public Health Service Act.

NATIONAL INSTITUTES OF HEALTH

NATIONAL LIBRARY OF MEDICINE

For an additional amount to carry out section 301 and parts I and J of title III of the Public Health Service Act with respect to conducting research, development, and demonstration projects at an existing academic health center in the Pacific Northwest $5,900,000 to remain available until expended.

GRANTS FOR CONSTRUCTION OF ACADEMIC FACILITIES

For part B of title VII of the Higher Education Act of 1965, $22,500,000, to remain available until expended, shall be available for two grants in New England except that the provisions of section 721(a)(2) and (b) shall not apply to the funds appropriated under this heading, and the amount of the grants paid from funds appropriated under this heading shall not be subject to any matching requirement contained in section 721(c) of such part and shall be used for two facilities of the type mentioned in section 713(g):

MOTION OFFERED BY MR. WHITTEN

Mr. WHITTEN. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. WHITTEN moves that the House recede from its disagreement to the amendment of the Senate numbered 148 and concur therein with an amendment, as follows:

FACILITIES DEVELOPMENT

HEALTH RESOURCES AND SERVICES ADMINISTRATION

HEALTH RESOURCES AND SERVICES

For an additional amount for "Health resources and services" for the remodeling and expansion of an existing academic health center library under section 720(a)(1) of the Public Health Service Act, $14,500,000, to remain available until expended; and notwithstanding any other provision of this or any other Act, such amount shall be made available without regard to the provisions of sections 702(b) and 722(a)(1) of the Public Health Service Act.

NATIONAL INSTITUTES OF HEALTH

NATIONAL LIBRARY OF MEDICINE

For an additional amount to carry out section 301 and parts I and J of title III of the Public Health Service Act with respect to conducting research, development, and demonstration projects at an existing academic health center, $5,900,000 to remain available until expended.

GRANTS FOR CONSTRUCTION OF ACADEMIC FACILITIES

For part B of title VII of the Higher Education Act of 1965, $22,500,000, to remain available until expended.

Mr. CONTE (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Mississippi (Mr. WHITTEN).

The motion was agreed to.

The SPEAKER pro tempore. The Clerk will designate the next amendment in disagreement.

Senate amendment No. 151 reads as follows:

Senate amendment No. 151: Page 41, after line 20, insert:

SENATE OFFICE BUILDINGS

For an additional amount for "Senate office buildings", $250,000, to remain available until expended.

An additional amount not to exceed $210,000 of the unobligated balance of the appropriation for Senate Office Buildings for the fiscal year 1983 shall remain available until expended.

MOTION BY MR. WHITTEN

Mr. WHITTEN. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. WHITTEN moves that the House recede from its disagreement to the amendment of the Senate numbered 151, and concur therein.

Mr. CONTE (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Mississippi (Mr. WHITTEN).

The motion was agreed to.

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The SPEAKER pro tempore. The Clerk will designate the next amendment in disagreement.

Senate amendment No. 152 reads as follows:

Senate amendment No. 152: Page 42, strike out lines 1 to 6, inclusive, and insert:

Notwithstanding any other provision of law, to enable the Architect of the Capitol, under the direction of the Commission on the West Central Front of the United States Capitol, to restore the West Central Front of the United States Capitol (without change of location or change of the present architectural appearance thereof) in substantial accordance with the "Restoration of the West Central Facade" report dated March 1978, $48,000,000, to remain available until expended: *Provided*, That the architect of the Capitol, under the direction of such Commission and without regard to the provisions of section 3709 of the Revised Statutes, as amended, is authorized and directed to enter into such contracts, incur such obligations, and make such expenditures for personal and other services and other expenses as may be necessary to carry out this paragraph: *Provided further*, That any general construction contracts entered into under authority of this paragraph shall be for a firm fixed price, supported by standard performance and payment bonds and shall be awarded competitively among selected responsible general contractors approved by such Commission and upon the approval by such Commission of the amount of the firm fixed price contracts: *Provided further*, That, the Commission on the West Central Front of the United State Capitol shall appoint, from among privat individuals who are qualified, by reason o education, training, and experience, a con sulting architect who shall assist the Com mission in directing the architect of th Capitol with respect to the restoration o the West Central Front of the United State Capitol: *Provided further*, That the Arch tect of the Capitol shall keep the consultin architect appointed under this paragrap fully and currently informed of the progre of the restoration of the West Centra Front of the United States Capitol: *Pro vided further*, That the consulting architec for the restoration of the West Centr Front of the United States Capitol appoin ed under this paragraph shall be paid fo his services (out of the sum appropriated b this paragraph) at such rate of pay as th Commission considers appropriate, but no exceeding a rate equal to the daily equiv lent of the rate of basic pay payable fo grade GS-18 under the General Schedu under section 5332 of title 5, United State Code.

MOTION OFFERED BY MR. WHITTEN

Mr. WHITTEN. Mr. Speaker, I offe a motion.

The Clerk read as follows:

Mr. WHITTEN moves that the Hou recede from its disagreement to the amen ment of the Senate numbered 152 a concur therein with an amendment, as fo lows: In lieu of the sum named in sa amendment, insert "$49,000,000".

The motion was agreed to.

The SPEAKER pro tempore. Th Clerk will designate the next amen ment in disagreement.

Senate amendment No. 158 reads a follows:

Senate amendment No. 158: Page 44, aft line 21, insert:

SEC. 908. (a) For the purposes of this se tion—

(1) "charitable organization" means an o ganization described in section 170(c) of t Internal Revenue Code of 1954;

(2) "honorarium" means a payment money or anything of value to a Member an appearance, speech, or article, by t Member; but there shall not be taken i account for the purposes of this section a actual and necessary travel expenses, curred by the Member, and spouse or aide to the extent that such expenses paid or reimbursed by any other person, a the amount otherwise determined shall reduced by the amount of any such