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by **Congressman**
Lawrence P. McDonald
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About this article...

Make Congress Stop Bussing by Congressman Lawrence P. McDonald, which points out that the way to stop forced bussing is through legislative action to withdraw jurisdiction from the federal courts, originally appeared in the April 1976 issue of AMERICAN OPINION magazine.

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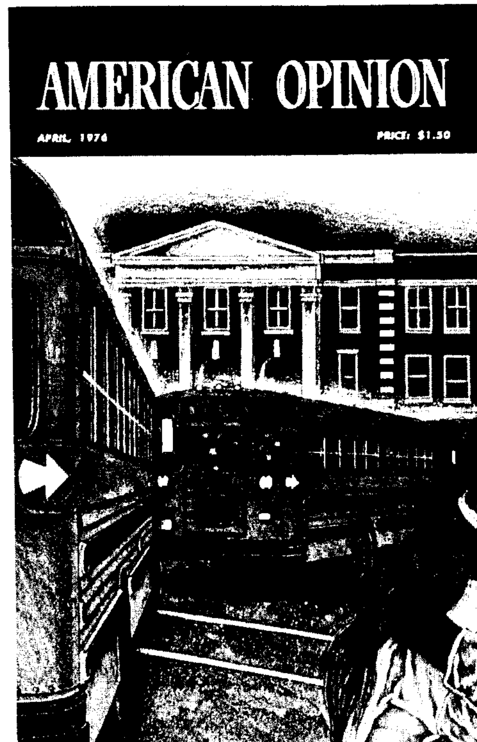

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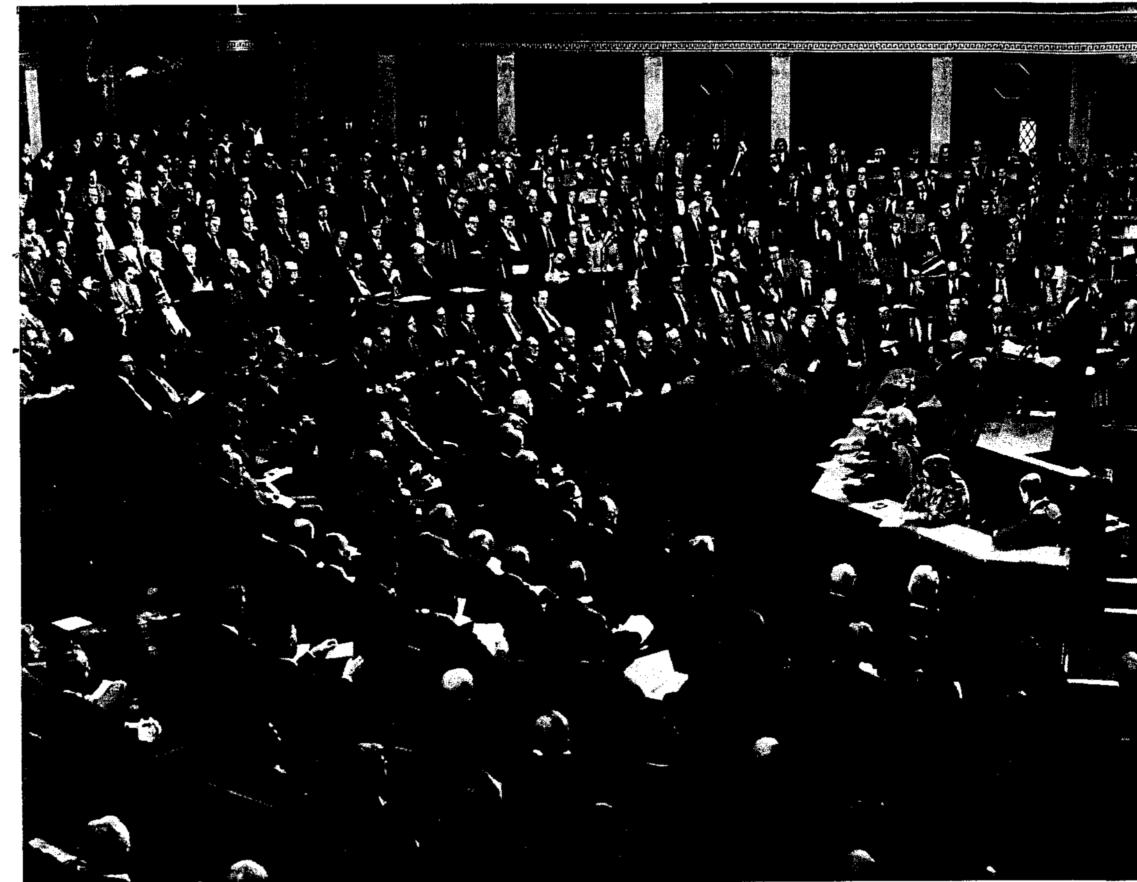
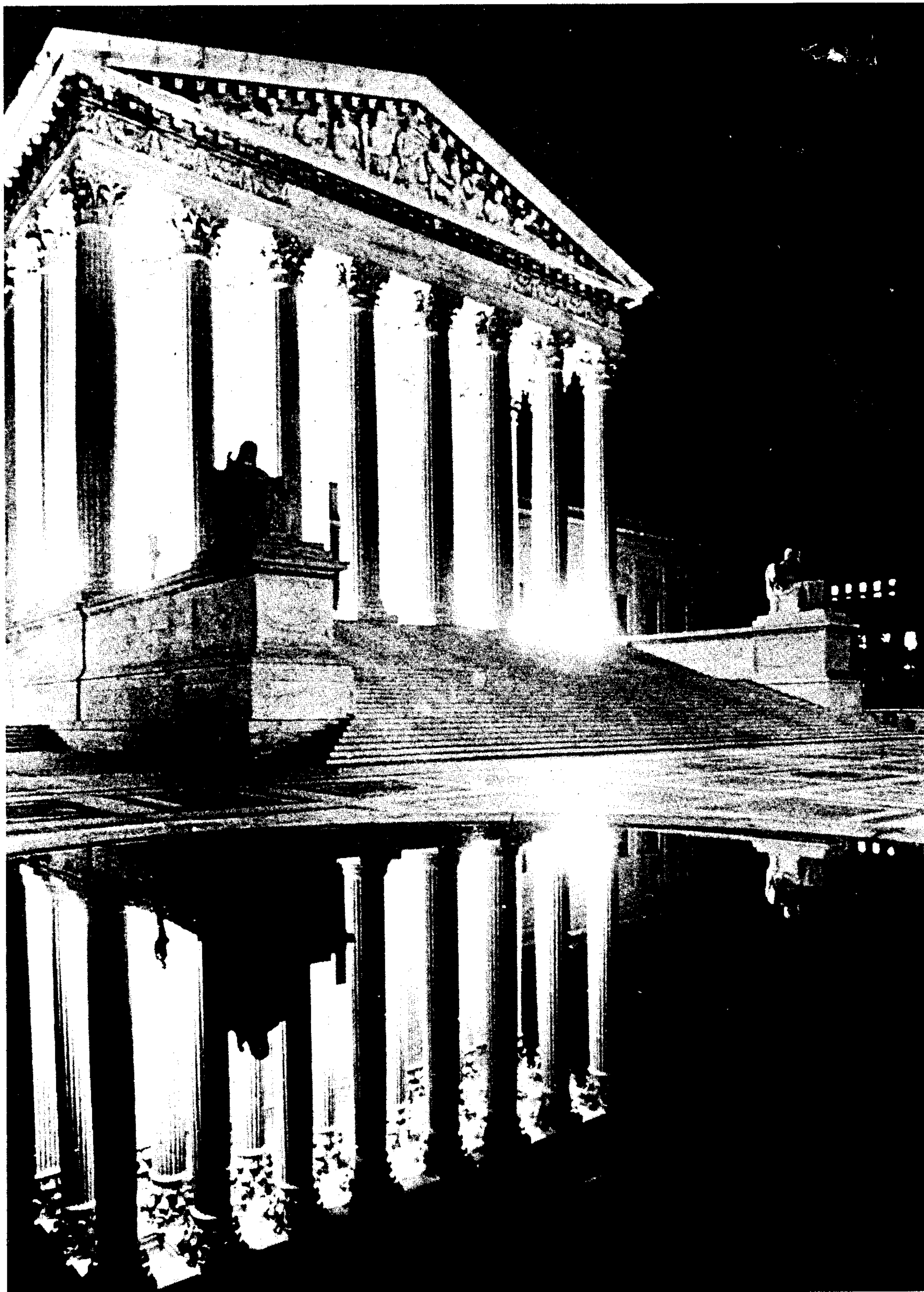


MAKE CONGRESS STOP BUSSING

Lawrence P. McDonald *is a Democrat Congressman, a distinguished physician and surgeon, a member of the House Armed Services Committee, and serves on the* AMERICAN OPINION *editorial advisory board. He is a frequent contributor.*

■ BUSSING is now probably the most hated word in our language. Small wonder. Forced bussing has been made to satisfy the strange passions of people like Senator George McGovern, who apparently regard themselves as the Avenging Angels of Liberaldom. Senator McGovern told furious parents in Louisville that "Bussing is one way to pay the bill for the ancient regime of fascism."

Fanatics are so unattractive. But then, so are hypocrites. It is almost classically true that those who most heartily commend forced bussing for the general public have arranged to place their own children in posh private schools. One of our congressional "Limousine Liberals" recently replied to the point by airily declaring



The McDonald School Bill (H.R. 12365): **Pursuant to Article III, Sections 1 and 2 of the United States Constitution, no court of the United States shall have the Jurisdiction to make any decision, or issue any order, which would have the effect of requiring any individual to attend any particular school.**

that he felt it would be unfair to make his child suffer for his father's opinions. It makes perfect sense to the average, arrogant "Liberal" that other people's children should suffer for those "opinions," simply because their parents are deemed deficient in "Liberal" virtues.

But my purpose here is not to deplore bussing; my purpose is to help you *do* something about it.

We know that forced bussing is morally outrageous. By all the "civil rights" laws ever passed, it is illegal. And, by every poll, it remains overwhelmingly unpopular. So why do we still have forced bussing? The people have turned in the scores of millions to their elected representatives in Congress for relief. Yet, despite the efforts of hundreds of sincere Members of Congress over the past decade or so, your elected representatives have failed to provide relief. How can this be?

We are told that the federal courts that are ordering bussing are somehow above the law. That Congress can do nothing. The facts are that the Congress has both the constitutional power and the constitutional duty to check judicial tyranny whenever necessary. The Founding Fathers gave us a Constitution based upon "checks and balances," providing ample remedies for preventing individuals, cliques, or even whole branches of government from running amok. The Constitution contains *several* provisions by which the Congress can "check" the Judiciary.

The best-known of these is the method of selection of judges; they are nominated by the Executive Branch (the President) and then either confirmed or rejected by the Legislative Branch (the Senate). Unfortunately, a rather tawdry routine has developed; federal judgeships are now regarded as patronage plums, arrangements are made quietly, and confirmation usually goes off without a wrinkle. Conservatives never make noise, as when the "Liberals" buzz-sawed their opposition in the Carswell-Haynesworth affair. The result is that, ever since the New Deal, the "Liberals" have been packing the federal courts while Conservatives in the Senate have folded their hands and smiled.

However, the Constitution offers a variety of other means for "checking" and "balancing" a tyrannical Judiciary. Article Three of the Constitution grants to Congress the power to create (and therefore to reorganize) all the inferior federal courts. It also states that judges "shall hold their offices during good Behavior," meaning that federal judges are subject to impeachment

U.P.I.

Eight thousand people marched in Boston to protest "forced bussing," but their Congressmen have told them nothing can be done. That is not true! Passage of the McDonald Bill (H.R. 12365) would stop "forced bussing" tomorrow.

U.P.I. Photos

Article III of the U.S. Constitution gives Congress the power to withdraw the Jurisdiction of the federal courts over pupil assignments. Passage of H.R. 12365 would do this, ending "forced bussing" and stopping the judicial usurpation.

according to Article One, Sections Two and Three. Before the Nixon affair, impeachment was often said to be a weapon rusted into its scabbard, but it has since become very credible indeed. Many federal judges, by their behavior, cry out for impeachment. It is not likely, however, that a "Liberal" Congress could be persuaded to impeach the entire federal bench, however gratifying such trials might seem to some.

Under Section One of Article Three, alternatively, the Congress is authorized by the Constitution to create special courts for special types of cases. For example, we already have special federal tax courts, and courts for hearing customs disputes, patent claims, and military appeals. A special court could be created to hear the plague of school cases as well. I would not recommend that, however, because I suppose it would result in little more than the appointment of Eldridge Cleaver as chief justice of a federal school court.

But there is a remedy, all neatly provided long ago by the Founding Fathers. It is to be found in Section Two of Article Three of the Constitution of the United States. This section empowers the Congress *to restrict the Jurisdiction of the federal courts.* Here are the exact words of the Constitution:

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, *with such Exceptions, and under such Regulations as the Congress shall make.*

Read that again, there is no mistaking its meaning. It says that Congress has the power completely to remove the appellate Jurisdiction of the entire federal judiciary over bussing. Period. Establishment "Liberals" would have us believe that any move to curtail the excesses of the federal courts constitutes Rightwing Extremism, or that it is "simply not done," or that such an effort is doomed to fail. The gloom-and-doomers have, in fact, discouraged a lot of people around Congress. Yet history shows that the courts *have* been checked by this means in the past, just as the Founding Fathers intended.

That even the Supreme Court has been checked by this means — and *knows* its appellate Jurisdiction can be withdrawn by Congress — dates to a Reconstruction Era episode a century ago. It was certainly a "civil rights" case, one involving an appeal based on the denial of *habeas corpus* to a civilian newspaper editor "convicted by a military commission of acts obstructing Reconstruction." All Southerners will recognize this as a no-win situation without court interference. What happened was that the Reconstruction Congress merely stripped the federal court of any jurisdiction in the matter, and the court had to accept it, saying (*ex parte McCardle*):

We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words.

So, you see, congressional authority in such matters is open and shut.

There is a very simple way of dealing with Judicial tyranny over bussing, and it can be done by a simple vote of the Congress withdrawing Jurisdiction. There is nothing tricky about it — in fact it is precisely the remedy provided by the Founding Fathers for preventing Judicial tyranny. It is an important part of our checks and balances system, and it *must* be instituted if Congress means to maintain the constitutional balance between the Legislative and Judicial Branches of our government.

Many legislators have offered Constitutional Amendments, hoping to settle the bussing issue definitively, in a manner which the Supreme Court cannot sweep aside as "unconstitutional." I believe the simple legislative process I have cited, contemplated by the Founding Fathers, is by far the superior solution for two reasons. The first is a matter of principle. Amendment implies that the Constitution has been found defective. The flaw lies not in the Constitution, but in those sworn to support and defend it — judges who have labored to twist it into something you and I cannot even recognize any more. Our problem lies with defective officials, not a defective Constitution.

Secondly, as a practical matter, a Constitutional Amendment requires extraordinary effort spread over many years. This is as it should be; the Constitution was not meant to be toyed with in polemical sport. Besides, for a fraction of the effort which an Amendment would require, a simple law could be passed, *this year*, which would have precisely the same effect.

In fact, my proposal would have an even better effect, for it would serve notice on the federal courts that the day of judicial tyranny is over. The federal courts have been dragging the Constitution in the mud by claiming that this ancient and honorable document is the source and authority for one travesty of justice after another. It is well past time that a vigilant Congress exercised its constitutional authority and put an end to such outrages.

There are few more depressing occupations than studying "landmark" school-integration cases; the reasoning which the courts accept becomes more bizarre by the year. We have reached the point where any shabby pretext will likely be swallowed whole and later regurgitated by some judge as "the law of the land." It is particularly discouraging to observe the method by which *any* school district *anywhere* can be found guilty of *de jure* segregation and subjected to takeover by some black-robed little tyrant who has politicked his way on to a federal bench.

Let me try to explain briefly how the original legal war on segregation degenerated into the present drive to reduce the nation's public school system to a total shambles.

With all the relish mustered for a Second Reconstruction, the federal courts originally bore down upon the South because Southern schools were segregated, under state law. This is known as *de jure* segregation. Fancying themselves without sin, the righteous folk of the North and West let out a chorus of snickers and cheers. Any segregation in their communities was called *de facto*, the result of such phenomena as birds of a feather flocking together in congenial neighborhoods, and not the result of racist laws. It was complacently assumed that the courts could only hammer away at *de jure* segregation.

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The snickers and cheers soon faded. Having tasted dictatorial power and found it agreeable, and having the support of the "Liberal" Establishment, the federal courts were not long in finding a way to draw a bead on, actually, *any* school system *anywhere.*

Now that "integration" has been reduced to a numbers game, a series of quotas, an exercise in reverse discrimination, it is a very simple task to convert the slightest deviation from a court-determined racial formula into a *de jure* segregation case. As an example, let us assume that a federal court decision that all schools (and possibly even all classrooms) in a given locality should exhibit the approved mixture of sixty-nine percent whites, twenty-three percent blacks, and eight percent Mexican-American. Any deviation from this obviously constitutes a degree of "segregation," does it not? And since all schools are administered in some way, and the administration has not resulted in the court-ordered mixture of 69-23-8, then the deviance, constituting a degree of segregation, has resulted from official action or inaction. That means the segregation is *de jure*, the result of official acts.

Gotcha! say the federal courts. And once they've *gotcha*, they don't let go. Ask the people of Boston, who are suffering an indeterminate sentence under Judge Arthur Garrity.

In the name of the Constitution, in the name of "equal protection of the laws," more communities all across America are finding themselves subjected to Judicial dictatorship. One man, untouchable, issues decrees, sweeps aside state and local laws like candy-wrappers, reduces local officials to jerking marionettes, orders fantastic expenditures to be paid for by new taxes, regardless of the wishes of the taxpayers — and on and on. Ordinary citizens find that *their* constitutional rights have faded like the constellations at sunrise. A federal judge can command his own Gestapo of U.S. Marshals, and can jail anybody for anything he chooses to interpret as "contempt of court."

The fact of the matter is that in requiring forced bussing the federal courts have ignored both the letter and the intent of many laws, including the Civil Rights Act itself. The Supreme Court, in 1970, decided that any outrage is acceptable if it destroys "the *status quo* which is the very target of all desegregation processes." By that reasoning the rights of parents and children, assured under Title Six of the Civil Rights Act prohibiting school assignments based upon race, go out the window.

What we have, therefore, is in no essential way different from the infamous version of law known in the Soviet Union as "Socialist Legality." Under the dictatorship of the Communist Party, it has been axiomatic that whatever advances the Party program is legal, and whatever impedes it is illegal.

And so, in the United States, we find that whatever is put forward that will destroy the *status quo,* in school cases, is legal, and whatever impedes this relentless attack upon the *status quo* is illegal. I challenge any judge or lawyer to explain how that is different from "Socialist Legality" in the Soviet Union. Tyrants now rule us from the federal bench, wrapping themselves in the august robes of the U.S. Constitution — which alone offers us a remedy to preserve control over our lives by withdrawing Jurisdiction from the usurpers.

It is time to rip away their disguise; and the way to do it is through

simple legislation removing from federal Jurisdiction cases of a type the federal courts have proved themselves unable to handle within the bounds of law and reason, and especially taking from the hands of these judges the hated implement called "forced bussing."

Let us now see whether the *courts* are prepared to obey "the law of the land." They have been quick to demand submission to their version of it when laying waste to the schools, and to the rights of parents and children; let us see what happens when the Congress removes their Jurisdiction over forced bussing under Article Three, Section Two of the Constitution of the United States.

Too many Members of Congress either haven't read the Constitution or fear that the courts will not accept a constitutional check, since they have ignored the letter of the law and clear congressional intent in the past. Thus, in order to "avoid a confrontation," they shrink from their *duty* to their oppressed constituents, and from their *responsibilities* under the Constitution of the United States to correct abuses of tyrannical courts. I find that unconscionable, and I think you should too!

What is happening, my friends, is that a Congress that could stop forced bussing *tomorrow* is playing you for a sucker. In the Ninety-Fourth Congress, a now-familiar routine is in progress. As usual, half a hundred bills aimed at court-ordered forced bussing have been introduced. And, as usual, these bills are buried alive in Subcommittees dominated by a handful of powerful "Liberals" who favor forced bussing. No Hearings will ever be held. No bill will ever reach the floor. The entire effort will have been useless, a waste of time, a mere show.

However, there is a remedy for this, too. It is called the "discharge petition." If a majority of Members sign a petition demanding that a bill be brought to the floor for consideration, the Committee roadblock can be dynamited out of the way. Use of the discharge petition is extremely rare. The excuse usually given is that Members are anxious to avoid alienating the House leadership. However, we may recall that the Freshman Democratic Caucus, organized under radical leaders in December of 1974, was *praised to the skies* by our mass media when it "offended House leadership" by unceremoniously booting from office *four* ranking Committee Chairmen! That would seem a somewhat more offensive act than signing a discharge petition.

What is needed, I believe, is a very simple bill which states very clearly that the federal courts, including the Supreme Court, shall have no Jurisdiction at all over pupil assignment. This can end not only court-ordered forced bussing but any attempts at forced bicycling or even forced walking. I have introduced a bill, H.R. 12365, which says:

Pursuant to Article III, Sections 1 and 2 of the United States Constitution, no court of the United States shall have the Jurisdiction to make any decision, or issue any order, which would have the effect of requiring any individual to attend any particular school.

Now, that is the easy part. By the time you read this, the bill will have been sent to the Civil and Constitutional Rights Subcommittee of the House Judiciary Committee, where Chairman Don Edwards of California, joined by his colleagues (Dodd of Connecticut, Badillo of New York, Drinan of Massachusetts, and Seiberling of Ohio), will file it in the "round file" they reserve for all anti-bussing bills.

There is only one way to get this anti-bussing bill out of Committee, and that is by means of a discharge petition. *Your* Congressman, *every* Congressman, will have to decide whether or not he or she will sign that petition, bring that anti-bussing bill to the floor — and then vote for it — or whether he or she will refuse to sign, and thereby stand revealed as a supporter of the Judicial tyranny behind forced bussing and all the related outrages that go along with it.

Some Members of Congress, I am sorry to say, will be made uncomfortable and therefore unhappy by this. They will squirm and wriggle and say, "Of course, I'm against forced bussing, but . . . ." Stop them right there. Attitudes like that have resulted in more than ten years of ineffective action, when there has been any action at all. The fact is that the people do not want the federal courts hauling their children from pillar to post to play racist games, yet the Congress has failed to prevent it.

Congress *can* prevent it. It is *possible* to stop the courts dead in their tracks; it is *possible* to greet the reopening of the schools in September with no court-ordered pupil shuffling. But the "dynamite" needed to blast away the roadblocks must be supplied by an aroused and informed public opinion. The message has to be that *you*, the citizen, voter, taxpayer, parent, have grown wise to the game of fiddle-and-delay, of gut-by-amendment, of bury-alive. Let your Congressman know that you are aware that there is a bill which can stop bussing cold and serve notice on the federal Judiciary that they are not above the Constitution and the people. Tell him that you are tired of Congressional inaction, and that if he wants your support in November, you expect to see his name on a discharge petition for H.R. 12365, and that you expect to see him cast his vote in favor of putting the federal courts out of the pupil-assignment business.

No single bill can set *everything* right again. What my bill can do is require the courts, *with the force of law*, to stop their unconscionable manipulation of schoolchildren immediately. It proposes that we *use* the constitutional remedy provided by the Founding Fathers. Here, again, is the wording of the entire bill:

Pursuant to Article III, Sections 1 and 2 of the United States Constitution, no court of the United States shall have the Jurisdiction to make any decision, or issue any order, which would have the effect of requiring any individual to attend any particular school.

Note that there are no weasel-words available for the federal courts to "interpret" or "construe" their way out of that prohibition. If they want to make a "constitutional crisis" out of it, we can go on from removal of their Jurisdiction over bussing to removal of their Jurisdiction over abortion, and on and on until the would-be tyrants in black robes get the point and decide to return to sanity. But to put the checks and balances system of the Constitution into effect we must first have the support of your Congressman on my discharge petition. And that, my fellow Americans, is a job that must be left to each of you. ■ ■