

The National Coalition ***on*** ***School Diversity***

November 17, 2017

The Honorable Mitch McConnell
Senate Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Chuck Schumer
Senate Minority Leader
322 Hart Senate Office Building
Washington, DC 20510

The Honorable Thad Cochran
Chairman
Senate Appropriations Committee
The Capitol, S-128
Washington, DC 20510

The Honorable Patrick Leahy
Vice Chairman
Senate Appropriations Committee
The Capitol, S-128
Washington, DC 20510

Dear Majority Leader McConnell, Minority Leader Schumer, Chairman Cochran, and Vice Chairman Leahy:

On behalf of the National Coalition on School Diversity (www.school-diversity.org) and the undersigned organizations and individuals, we urge the Senate to strike outdated and harmful language from the FY 2018 appropriations legislation that prohibits federal funding to be used for transportation and other purposes to further public school racial integration.

The National Coalition on School Diversity is a growing network of civil rights organizations, university-based research centers, and state and local coalitions working to expand support for government policies that promote school diversity and reduce racial isolation. We also support the work of state and local school diversity practitioners.

The research on the benefits of diversity are clear. Students attending socio-economically and racially diverse schools have better test scores and higher college attendance rates than peers in more economically and racially segregated schools.¹ The benefits from attending diverse schools also continue into adulthood. These include subsequent reduced segregation in neighborhoods, colleges, and workplaces, higher levels of social cohesion, and reduced racial prejudice.²

¹ National Coalition on School Diversity Research Brief 5, “School Integration and K-12 Outcomes: An Updated Quick Synthesis of the Social Science Evidence ” (October 2016), <http://school-diversity.org/pdf/DiversityResearchBriefNo5Oct2016Big.pdf>.

² National Coalition on School Diversity Research Brief 3, “The Impact of Racially Diverse Schools in a Democratic Society” (October 2010), <http://school-diversity.org/pdf/DiversityResearchBriefNo3.pdf>.

It appears that in every appropriations legislation since at least 1974, there has been language prohibiting federal funding to be used for transportation to support public school racial desegregation. Presently, such language exists in S. 1771, at Sections 301 and 302:

Section 301: “No funds appropriated in this Act may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system.”

Section 302: “None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student’s home, except for a student requiring special education, to the school offering such special education, in order to comply with title VI of the Civil Rights Act of 1964. For the purpose of this section an indirect requirement of transportation of students includes the transportation of students to carry out a plan involving the reorganization of the grade structure of schools, the pairing of schools, or the clustering of schools, or any combination of grade restructuring, pairing, or clustering. The prohibition described in this section does not include the establishment of magnet schools.”

Such prohibitions are vestiges of an era during which opposition to court-ordered public school racial integration raged. It is alarming that such legislative language would still be present in 2017, in an era when racial re-segregation of our public schools has surged, where a majority of members of the Supreme Court have declared school diversity to be a “compelling government interest,”³ and where so many districts are working voluntarily to promote racial and economic integration for the benefit of their children and communities.

Last year, the Government Accountability Office found increasing racial and socioeconomic isolation in our nation’s schools, with the number of intensely segregated schools more than doubling since 2001.⁴ At best, the legislative language in Sections 301 and 302 does nothing to combat this trend. At worst, it exacerbates the harmful effects of racial segregation on our students and our increasingly divided communities. As the findings in the landmark civil rights Supreme Court case *Brown v. Board of Education* unambiguously found, a racially segregated education is, by its very nature, an unequal education.

The outdated “anti-busing” provisions of S.1771 effectively abrogate portions of the reauthorized Magnet School Assistance Program (MSAP), included in the 2015 Every Student Succeeds Act (ESSA). As the MSAP program makes clear, “It is in the best interest of the United States to continue the Federal Government’s support of local educational agencies that are implementing court-ordered desegregation plans and local educational agencies that are voluntarily seeking to foster meaningful interactions among students of different racial and ethnic backgrounds, beginning at the earliest stage of such students’ education.”⁵ ESSA Section 4407(a)(9) provides grantees with the flexibility to use MSAP funds for transportation to and from magnet schools; this flexibility would effectively be taken away by Sections 301 and 302 of the appropriations bill quoted above. Even though Section 302 includes a sentence about exempting the

³ *Parents Involved In Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 797 (2007) (Kennedy concurring), <http://www.supremecourt.gov/opinions/boundvolumes/551bv.pdf>.

⁴ Government Accountability Office, “K-12 Education: Better Use of Information Could Help Agencies Identify Disparities and Address Racial Discrimination.” (April 2016), <http://www.gao.gov/assets/680/676745.pdf>.

⁵ ESSA, Section 4401(a)(4)(A).

establishment of magnet schools, the Section still prohibits funds from being used for the transportation of students.

These provisions also limit the range of potential school improvement strategies available to State Educational Agencies (SEAs) and Local Educational Agencies (LEAs) under ESSA. Section 1111(d) of ESSA gives SEAs and LEAs the authority to utilize Title I funds to implement locally determined and State determined interventions in schools identified for comprehensive support and improvement or targeted support and improvement. However, S. 1771 Sections 301 and 302 prevent SEAs and LEAs from pursuing a range of potentially effective school improvement strategies. For example, New York State's ESSA plan outlines State-approved interventions for schools identified for comprehensive support and improvement. Interventions listed include the use of Title I School Improvement Funds under Section 1111 to support district level efforts to increase diversity and reduce socio-economic and racial/ethnic isolation and bias in schools. Thus, S. 1771 Sections 301 and 302 appear to be in direct conflict with the will of Congress in passing ESSA, as they clearly undermine ESSA's focus on local control and flexibility.

Additionally, S. 1771 Sections 301 and 302 limit the range of school improvement techniques that can be implemented and evaluated under ESSA's Education Innovation and Research grant program. There is a strong evidence base that integrated schools provide better educational opportunities and outcomes for students, but we can continue to learn about specific techniques for integrating schools and educating integrated student bodies. By barring the use of federal funds to transport students for the purposes of racial integration, S. 1771 Sections 301 and 302 undercut innovators' ability to explore new and potentially significant school improvement techniques.

Recent events in our country underscore the importance of supporting diversity in schools so that residents can ultimately live, work, and play in an inclusive environment. As stated by Justice Anthony Kennedy in his concurring opinion in *Parents Involved In Community Schools v. Seattle School Dist. No. 1*: "This Nation has a moral and ethical obligation to fulfill its historic commitment to creating an integrated society that ensures equal opportunity for all of its children."⁶ Striking the outdated and harmful language from the appropriations bill is a small but important step in reaching this goal.

Thank you for your support of programs that promote diversity in our public schools.

cc: The Honorable Paul Ryan
The Honorable Nancy Pelosi
The Honorable Rodney Frelinghuysen
The Honorable Nita Lowey

⁶ *Parents Involved In Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 797-98 (2007) (Kennedy concurring), <http://www.supremecourt.gov/opinions/boundvolumes/551bv.pdf>.

Sincerely,

Philip Tegeler
Michael Hilton
Poverty & Race Research Action Council
Washington, DC

Todd A. Cox
NAACP Legal Defense and Educational Fund, Inc.
Washington, DC

Faiz Shakir
American Civil Liberties Union
Washington, DC

Brenda Shum
Lawyers' Committee for Civil Rights Under Law
Washington, DC

Liz King
The Leadership Conference on Civil and Human Rights
Washington, DC

Donna M. Harris-Aikens
National Education Association
Washington, DC

American Federation of Teachers
Washington, DC

Todd Mann
Magnet Schools of America
Washington, DC

Lorén Trull
UnidosUS
Washington, DC

Brent Wilkes
League of United Latin American Citizens
Washington, DC

Laura M. Esquivel
Hispanic Federation
Washington, DC

Jesse Hahnel
Seth M. Galanter
National Center for Youth Law
Washington, DC

Neena Chaudhry
National Women's Law Center
Washington, DC

Keith Whitescarver
National Center for Montessori in the Public Sector
Washington, DC

Ken Kimerling
Asian American Legal Defense and Education Fund
New York, NY

Juan Thomas
National Bar Association
Chicago, IL

Gary Orfield
Civil Rights Project/Proyecto Derechos Civiles
Los Angeles, CA

Courtney Everts Mykytyn
Integrated Schools
Los Angeles, CA

Bonnie Allen
Chicago Lawyers Committee for Civil Rights Under Law
Chicago, IL

Kelly Wickham Hurst
Being Black at School
Springfield, IL

David Harris
Charles Hamilton Houston Institute for Race & Justice
Harvard Law School
Cambridge, MA

Susan E. Eaton
The Sillerman Center for the Advancement of Philanthropy
Brandeis University
Waltham, MA

Peter Piazza
School Desegregation Notebook
Somerville, MA

Joshua A. Bassett
Institute for Social Progress
Wayne County Community College District
Detroit, MI

Myron Orfield
Institute on Metropolitan Opportunity
Minneapolis, MN

David Glaser
Voluntary Interdistrict Choice Corporation (VICC)
St. Louis, MO

Rhonda Brownstein and Maureen Costello
Southern Poverty Law Center
Montgomery, AL

David D. Troutt
Center on Law, Inequality and Metropolitan Equity
Rutgers Law School
Newark, NJ

Michael A. Rebell
Center for Educational Equity
Teachers College, Columbia University
New York, NY

David Tipson
New York Appleseed
New York, NY

Fred Freiberg
Fair Housing Justice Center
Long Island City, NY

Elaine Gross
ERASE Racism
Syosset, NY

Mario Roque
Empire Justice Center
Rochester, NY

Paul Tractenberg
Center for Diversity and Equality in Education
Newark, NJ

Dr. Maria 'Cuca' Robledo Montecel
David Hinojosa
Intercultural Development Research Association
San Antonio, TX

john powell
University of California-Berkeley
Berkeley, CA*

Pedro A. Noguera
University of California-Los Angeles
Los Angeles, CA*

Kevin G. Welner
University of Colorado
Boulder, CO*

Casey D. Cobb
University of Connecticut
Storrs, CT*

John C. Brittain
UDC David A. Clarke School of Law
Washington, DC*

Jomills Henry Braddock II
University of Miami
Coral Gables, FL*

Elizabeth H. DeBray
University of Georgia
Athens, GA*

Vanessa Siddle Walker
Emory University
Atlanta, GA*

William Trent
University of Illinois at Urbana-Champaign
Champaign, IL*

Douglas N. Harris
Tulane University
New Orleans, LA*

Linda R. Tropp
University of Massachusetts
Amherst, MA*

Lee Teitel
Harvard Graduate School of Education
Cambridge, MA*

Gail Sunderman
University of Maryland
College Park, MD*

Curtis L. Ivery, Chancellor
Wayne County Community College District
Detroit, MI*

Roslyn Arlin Mickelson
University of North Carolina at Charlotte
Charlotte, NC*

Elise Boddie
Rutgers Law School
Newark, NJ*

Kara Finnegan
University of Rochester
Rochester, NY*

Erica Frankenberg
Pennsylvania State University
University Park, PA*

Derek Black
University of South Carolina
Columbia, SC*

Jennifer Jellison Holme
University of Texas
Austin, TX*

Richard R. Valencia
University of Texas
Austin, TX*

Genevieve Siegel-Hawley
Virginia Commonwealth University
Richmond, VA*

John B. Diamond
University of Wisconsin - Madison
Madison, WI*

*University affiliations provided for
informational purposes only