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False Busing Crisis

President Nixon has snatched the anti-busing ball off the muddy field of Florida primary politics and is trying to carry it to a November touchdown, whatever the price in national division. In his televised address Mr. Nixon rejected demands for a Constitutional amendment to ban school busing, not because it would trivialize the Constitution, but only because "it takes too long."

With a strident appeal for "action now" that lent a Presidential imprimatur to the hysteria already distorting this issue, Mr. Nixon has asked Congress to pass legislation that would "call an immediate halt to all new busing orders by Federal courts."

Far from adding perspective to the argument, the President further confuses it by inveighing against the busing of children over long distances to inferior schools "just to meet some social planner's concept of what is considered to be the correct racial balance. . . ." He wants to save a generation of children from the policies of those who are putting "primary emphasis on more busing rather than on better education."

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All this paints an alarming picture of a reality that does not exist. No new legislation is required to prevent the courts from mandating racially balanced schools. In a unanimous ruling based on an opinion written by Chief Justice Burger last April, the Court upheld busing as a means of dismantling dual school systems. At the same time, however, the Court stated explicitly that it had neither mandated nor considered desirable the establishment of a racial balance or of any "fixed mathematical norms."

The Burger ruling stressed that, where there was no history of discrimination, "it might well be desirable to assign pupils to schools nearest their homes." It specifically questioned the wisdom and propriety of transporting children over long distances.

Thus, it is clear that the Supreme Court does not require the kind of indiscriminate busing Mr. Nixon wants to outlaw. No legislation is required to prohibit a Federal court from ordering what the Supreme Court has already declared undesirable. Mr. Nixon must surely know that the principal aim of desegregation is to allow children who have been confined to inferior schools to be given access to superior ones, and not vice versa. Many children moreover have long been bused over long distances, in order to maintain segregation.

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The President's second proposal—the Equal Educational Opportunities Act of 1972—aims at improving schools now attended by poor children, in other words primarily the segregated schools. This is what desegregation was all about in the first place. It is in those districts which have failed in the nearly two decades since the historic Brown decision of 1954 either to desegregate or to improve the schools attended by black children that Federal courts have been driven to order busing.

There is little in the President's call for spending $2.5 billion to upgrade poverty schools that is not already contained in the Elementary and Secondary Education Act of 1965. Regrettably, neither the Federal Government nor many state and local school authorities have shown the will and skill to put the act and the funds to effective use.

President Eisenhower made little secret of his personal coolness toward the 1954 desegregation ruling, but he enforced the law as defined by the Court to the limit of his Presidential power. When the Chief Executive now appeals for legislation to limit the authority of the judiciary, he tampers with the foundations of government under law; for he diminishes the capacity of the courts to gain voluntary and peaceful compliance for their rulings. Such compliance is never more vital than in times of deep social conflict. It is an asset not to be squandered for temporary political gain.