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# Public Hearing

before

## SENATE EDUCATION COMMITTEE

### Senate Concurrent Resolution 23 (1R)

(Proposes constitutional amendment to prohibit  
State from forcing school districts to regionalize)

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**LOCATION:** Committee Room 12  
Legislative Office Building  
Trenton, New Jersey

**DATE:** June 8, 1992  
2:30 p.m.

#### MEMBERS OF COMMITTEE PRESENT:

Senator John H. Ewing, Chairman  
Senator Andrew R. Ciesla  
Senator Dick LaRossa



#### ALSO PRESENT:

Darby Cannon, III  
Joyce W. Murray  
Aides, Senate Education Committee  
Office of Legislative Services

New Jersey State Library

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#### **Hearing Recorded and Transcribed by**

The Office of Legislative Services, Public Information Office,  
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JOHN H. EWING

Chairman

JOSEPH A. PALAIA

Vice-Chairman

ANDREW R. CIESLA

JOSEPH M. KYRILLOS, JR.

DICK LAROSSA

MATTHEW FELDMAN

JOHN A. LYNCH

## New Jersey State Legislature

SENATE EDUCATION COMMITTEE

LEGISLATIVE OFFICE BUILDING, CN-068

TRENTON, NEW JERSEY 08625-0068

(609) 984-6843

## NOTICE OF PUBLIC HEARING

The Senate Education Committee will hold a public hearing on the following legislation:

**SCR-23 (1R)** Proposes constitutional amendment to prohibit State  
Cardinale/ from forcing school districts to regionalize.  
Palaia

The hearing will be held on **Monday, June 8, 1992 at 2:00 p.m.** in  
**Committee Room 12, Legislative Office Building, Trenton, N.J.**

*The public may address comments and questions to Darby Cannon, III, or  
Joyce W. Murrery, Committee Aides, or make bill status and scheduling  
inquires to Mary C. Lutz, secretary, at (609) 984-6843. Those persons  
presenting written testimony should provide 10 copies to the committee on  
the day of the hearing.*

Issued 5/28/92



[FIRST REPRINT]  
SENATE CONCURRENT RESOLUTION No. 23  
STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1992 SESSION

By Senators CARDINALE, PALAIA, BROWN,  
CONNORS, GORMLEY, DiFRANCESCO, BASSANO, CAFIERO,  
EWING, SCHLUTER, LaROSSA, LITTELL, CORMAN,  
SCOTT, BUBBA, DORSEY, HAINES, BENNETT and KOSCO

1 A **CONCURRENT RESOLUTION** proposing to amend Article VIII,  
2 Section IV of the Constitution of the State of New Jersey by  
3 the addition of a new paragraph.  
4

5 BE IT RESOLVED *by the General Assembly of the State of*  
6 *New Jersey (the Senate concurring):*

7 1. The following proposed amendment to the Constitution of  
8 the State of New Jersey is agreed to:  
9

10 PROPOSED AMENDMENT  
11

12 Amend Article VIII, Section IV by the addition of a paragraph 4  
13 to read as follows:

14 4. The State government, or any branch thereof including the  
15 judiciary, shall not, by law, rule, regulation or order require a  
16 local board of education to establish any form of regional or  
17 consolidated school district with one or more other school  
18 districts or to join an existing regional or consolidated school  
19 district, or impose any penalty on a school district for failing to  
20 establish or join a regional or consolidated school district <sup>1</sup>,  
21 either to accomplish the objectives of this Article or any other  
22 provision of this Constitution<sup>1</sup>.

23 2. When this proposed amendment to the Constitution is finally  
24 agreed to, pursuant to Article IX, paragraph 1 of the  
25 Constitution, it shall be submitted to the people at the next  
26 general election occurring more than three months after that  
27 final agreement and shall be published at least once in at least  
28 one newspaper of each county designated by the President of the  
29 Senate and the Speaker of the General Assembly and the  
30 Secretary of State, not less than three months prior to that  
31 general election.

32 3. This proposed amendment to the Constitution shall be  
33 submitted to the people at that election in the following manner  
34 and form:

35 There shall be printed on each official ballot to be used at that  
36 general election, the following:

37 a. In every municipality in which voting machines are not used,  
38 a legend which shall immediately precede the question, as follows:

39 If you favor the proposition printed below make a cross (x), plus  
40 (+) or check (✓) in the square opposite the word "Yes." If you are  
41 opposed thereto make a cross (x), plus (+) or check (✓) in the  
42 square opposite the word "No."

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:  
1 Senate floor amendments adopted May 21, 1992.

b. In every municipality the following question:

YES.	<p><b>PROHIBITION ON STATE REQUIRING LOCAL SCHOOL DISTRICTS TO REGIONALIZE</b></p> <p>Do you approve the proposed amendment to the State Constitution which prohibits the State government, or any branch thereof including the judiciary, from (1) requiring by law, rule, regulation or order that a local board of education establish any form of regional or consolidated school district with one or more other school districts, (2) requiring that a board of education join an existing regional or consolidated school district or (3) <sup>1</sup>[from]<sup>1</sup> imposing any penalty on a school district for failing to establish or join a regional or consolidated school district?</p>
NO.	<p><b>INTERPRETIVE STATEMENT</b></p> <p>If this proposed amendment to the State Constitution is approved, the State government, including the judiciary, would be prohibited from requiring, through a State law, rule, regulation or order, that a local board of education combine with other school districts to establish any form of regional or consolidated school district or join with any existing regional or consolidated school district. The State government would also be prohibited from imposing any penalty on a school district for failing to establish or join a regional or consolidated school district.</p>

Proposes constitutional amendment to prohibit State from forcing school districts to regionalize.

STATEMENT TO

**SENATE CONCURRENT RESOLUTION No. 23**

with Senate Floor Amendments  
(Proposed by Senator Cardinale)

ADOPTED May 21, 1992

These amendments make a technical correction and clarify the intent of the proposed Constitutional Amendment that forced regionalization of school districts shall not be used to accomplish any objective of any article of the State Constitution.

SENATE EDUCATION COMMITTEE  
STATEMENT TO  
SENATE CONCURRENT RESOLUTION No. 23  
STATE OF NEW JERSEY

DATED: MARCH 19, 1992

The Senate Education Committee favorably reports this resolution without committee amendments.

This resolution proposes an amendment to the State Constitution which provides that the State government, or any branch thereof, including the judiciary, shall not, by law, rule, regulation or order require a local board of education to establish any form of regional or consolidated school district with one or more other school districts or require it to join an existing regional or consolidated school district, or impose any penalty on a school district for failing to establish or join a regional or consolidated school district.



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Asbury Park, New Jersey

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Statement submitted by  
Paul Tractenberg, Esq.

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Statement submitted by  
Robert P. Broderick

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Statement submitted by  
Jennifer L. Hochschild

12x

Statement submitted by  
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Alfred W. Blumrosen, Esq.

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Statement submitted by  
Lisa Glick Zucker  
Legal Director  
American Civil Liberties Union of New Jersey

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Kenneth Carlson

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Henry J. Raimondo

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Statement submitted by  
Earl Preston Thomas

39x

Written testimony submitted by  
The Honorable John J. Gibbons  
to Senator John H. Ewing  
Chairman,  
Senate Education Committee

41x

\* \* \* \* \*

hw: 1-76



SENATOR JOHN H. EWING (Chairman): Good afternoon. I apologize for the delay, but we had a long debate on the Appropriations Committee prior to this, regarding the Pharmaceutical Assistance Act. I'd also like to announce, right now, that we'll keep the record open for one week in order to accept written testimony. Byron Baer has made this request, and I think it's certainly worthwhile. So if anybody wants to, or if you hear of other people who want to testify--

We will now hear from Senator Cardinale, the sponsor of the bill, please. Senator Cardinale?

SENATOR GERALD CARDINALE: Thank you, Mr. Chairman, and members of the Committee, both for considering me first because I have another committee meeting that I must attend shortly, and for your prior support for this measure when you voted it out of Committee a month or so ago.

To state for the record: This amendment is intended, specifically, to address the situation currently being litigated in the Appellate Division with respect to Englewood Cliffs, Tenafly, and Englewood, as well as for many circumstances throughout the State which are not currently under litigation, but where the facts and circumstances are essentially similar.

This issue took on a more ominous perspective when the Public Advocate became involved and expressed his intent to destroy the concept of neighborhood schools in New Jersey. In the opinion of some, apparently including the Public Advocate, where there is racial imbalance, that is, where a particular racial or ethnic group comprises an inordinate percentage of the public school population of a particular community, then the Commissioner or the courts should have the power to force communities nearby the so-called segregated communities to regionalize with that district, despite the wishes of the residents of the affected community. This amendment would preserve the voting rights of the people who have established

their communities, built their schools, and supported those schools with the intent that their children should attend those schools.

There is no question raised that the racial imbalance noted by the Public Advocate does, in fact, exist. It does. It comes about, however, through housing patterns, through where people have chosen to live, not through governmentally enforced or encouraged segregation. There are people of many racial and ethnic backgrounds in each of the three communities involved. No one, not even the Public Advocate, contends that within the borders of each community there is any action to which he could refer which could be remotely labeled segregation.

The remedy to the situation presented in these three communities, the remedy which was suggested by the Public Advocate, carries very serious fiscal and educational implications.

First off, there are parental preferences. Parents prefer to have children, especially young children, attend schools in their neighborhoods. And they support those schools because -- and they pay a lot of money for those schools, particularly in these three communities -- because they like the idea of having neighborhood schools. And they even consider it somewhat essential. They consider it so essential, that even where older children were involved, high school children, the end result of the policy which has been imposed by the Commissioner with respect to two of these communities, Englewood Cliffs and Englewood, is that when they could no longer send their children where they chose, and they were forced by the Commissioner to send them to the public school -- high school students -- we ended up with four. At the last Committee meeting I said eight. It's now down to four who attend the Englewood High School out of Englewood Cliffs. And the rest go to other places. Indeed, some would go to other



places in any event, and that's always the case. But certainly one could make the case that the high school program in the public schools in Englewood Cliffs has been destroyed by the Commissioner's order that they not be allowed to go anywhere else.

And why is that? It's because there is a perception that the children would be disadvantaged in one or another way if, in fact, they were forced to attend that school. Whether that perception be right or wrong, it is a perception which has become a reality, which has caused those parents to, in addition to paying their taxes, spend enormous sums of money to send their children to other schools. And no one can argue with that. It is the reality.

There are other fiscal realities. There is the fiscal reality of the fact that if Englewood somehow was able to force these other two towns to share their ratables -- and that's what could very well occur from the Public Advocate's position -- that without sending very many children to the schools these towns would lose their ratable base in the sense that they would have to be paying for the schools of the children of another community.

That's very real. And there are public officials, naturally, who would be the beneficiaries of that system, and residents who would be the beneficiaries of that system, who, in fact, would like to see that happen. This amendment is specifically drafted to preclude that possibility from occurring.

For government to believe that by fiat we can or should force parents to send their children to schools which they consider inferior, or even dangerous, is to be willing to destroy the basic foundation of support New Jersey's public schools have enjoyed for so many years. The fact is plainly before us. If we extend the reasoning behind what has occurred already with respect to high schools in Englewood Cliffs, and

we say that this is to be a general condition throughout the State, then why should people support school budgets? Why should they support the State's taxation policies with respect to providing support to schools, when, indeed, many, many, many of them will, in fact, not have the opportunity to send their children to the schools that they would like to send them to; namely, the schools that are in their own neighborhoods?

I think it would be a very unfortunate day for education in the State of New Jersey if we allowed that to come to pass. But I'm afraid that it might come to pass, absent this amendment.

I believe that the strength of our economy is based very largely on what we have in the way of a public education system. Universal education of our young people is a very important strength in terms of the economic base in New Jersey. And if we do things, however well-intentioned they might be -- and certainly, I understand the arguments presented by the people on the other side of this question. But their arguments pale into insignificance when you consider the fact that the reality is, we have achieved a wonderful educational system by virtue of having local control and local supervision over what is done. The parents are involved, and the parents see to it that the schools, in fact, provide excellent educational opportunity. And the parents of Englewood, in fact, do that just as well as the parents of Englewood Cliffs, and the parents of Tenafly. But for any group of parents to be told, "You no longer have the ability to control what's going to happen to your children," because the realities are such that if this joint district were put into effect -- and in fact, joint districts all over the State would be in very, very similar condition if those were put into effect -- one district, one town, would predominate the board, would make the judgments that would need to be made with respect to the educational system, but all of the towns would share the fiscal responsibilities.

I think it's very tempting for the people of Englewood in this particular circumstance, or for the people in the largest community in any similar kind of circumstance which might exist throughout the rest of the State. It's very tempting for them to want that situation to come to pass. But it's a terrible problem that is created for the people who live in the other communities.

I thank you very much for the opportunity to testify. If there are any questions from any members of the Committee, I would be very happy to answer them at this time, after which I will have to go back to my other committee.

SENATOR EWING: Thank you, Senator Cardinale.

SENATOR CARDINALE: Thank you very much.

SENATOR EWING: Steve Wiley? Is he here?

S T E P H E N B. W I L E Y, ESQ.: Thank you, Mr. Chairman.

SENATOR LaROSSA: Use the black microphone, too, it amplifies. Use the black microphone, also; both of them.

MR. WILEY: Mr. Chairman, members of the Committee, and staff, thank you for the opportunity to appear before you. I don't have a prepared statement. I received a call on Friday that this hearing was going to take place, and I have some background on it. I thought it might be of interest or helpful to you. Needless to say, I've seen your role and what you do, and it's awfully important that you get all the facts so that you can see what the implications are of the steps that are being asked of you.

The obvious one, of course, is the matter of school merger. The Englewood case has been identified by Senator Cardinale, and I gather that you are aware that there are some other situations around the State where that might become pertinent. I don't profess to know the details of those cases at all, or of their existence, other than the Englewood case. I haven't even seen opinions in that case.

I was called because 20 years ago, I guess it was, I handled a case in Morris County for the then Morristown School District in which we saw a situation where things had gotten pretty bad in terms of the relationships between Morristown and Morris Township, which were then in a sending receiving relationship to Morristown High School, and so we brought litigation to present all the facts. Ultimately, we did present them. We presented them to the Commissioner through a hearing officer, and the Commissioner said, "You're right. Things are coming to a very sorry pass in the Morristown school area. You're about to have a tipping point where you're going to have a poor, largely minority core, and a surrounding area more affluent, and essentially, all white."

And we were threatened. I was concerned. Others were concerned with what had happened in New Jersey and in other places -- other county seats around the State. Some of them you would be familiar with them. I don't mean to say all of them. And it seemed to be clear that something needed to be done. The Commissioner agreed and agreed, and wrote for 50 pages and said, "I agree," but he said, "I'm sorry, I have no power. I can't do anything."

So we took it to the Supreme Court, and the Supreme Court said, "Commissioner, in light of what you've found, the very serious circumstances that are presented here to the people of New Jersey, and the people of Morristown and Morris Township, we disagree with you because this State is structured on the idea, under the Constitution, that the reservoir of power is here in Trenton. You're in control: you and the other branches of government. The Department of Education, the courts, the Legislature in Trenton, the Governor, have the ultimate ability to rectify problems of this kind."

The Commissioner was saying, "I'm hogtied. My hands are behind my back. Mr. Wiley, you're a nice guy, but I'm not going to do anything for you." And it would have been, in my

humble judgment -- bear in mind that I was an advocate in the case, so I guess I sound like an advocate now -- it would have been tragic had he been upheld by the Supreme Court and said, you've got this awful problem that may become a disastrous problem. In the language of today, "You may be Los Angeles, instead of watching it on TV. But we're not going to be able to do anything. We're not going to let you do anything about it because we don't believe this Constitution is intended to give that kind of power to you and to the courts."

Fortunately, it didn't come out that way. And again, I'm seriously prejudiced on this, but I think you'll find if you talk to friends of yours that you may have in the area, that Morristown is now a happy, beaming place. Solid corporations are happy there: AT&T, Allied Chemical, Warner Lambert and what have you. It is an integrated, well-ordered community that I think would make you proud, if you're not familiar with it.

Now, I don't know what the facts are, let me say, in the other cases. I assume you, no doubt, know more than I do. As much as I would say is, that if somebody comes to you as a member of the Senate in the State of New Jersey, and proves to you that they have a situation as bad as our's threatened to be, it would be a shame for our State if your hands were tied. If you felt that something must be done, as a unanimous Supreme Court, in that case, did-- If you felt that, but could do nothing, think how tragic that would be. And I would say that in 99 out of 100 cases presented to you, you wouldn't feel that way. Nobody else has done it for 20 years. Nobody had done it ever before; maybe nobody will ever do it again. But to take that reservoir of power away, to strap your hands and your predecessor's hands would be, I think, tragic.

Let me make another point, and I'll get out of your way. In looking at this language it says that State government shall not require -- "State government through any of its

branches shall not require a local board of education to establish any regional districts, or to join in any regional districts, or impose any penalty on a school district for failing to establish or join." That-- Let me change my tone of voice and let me speak three registers higher. That is awful. That is tragic. Let me tell you why.

One of the big problems in education, and I'm sure you're aware of it, is in New Jersey we have, I think it's 620 or 625 school districts. Among that, I'll bet you 25 of them don't even have a school. I'll bet you between 20 and 30 don't have a school. They're nonoperating districts. And we get laughed at because we're so vulcanized that we have districts where they don't even have any schools. What this would do is to deny you, as I read it, deny you the power to do anything about it.

Like what? To abolish a district? Well, yeah, okay. You couldn't abolish a district and require that they join some other group. Let me add this. You couldn't have a State aid program to encourage them to get together, because the way this reads that would be a penalty on anyone who refused. And you cannot impose any penalty on a school district for failing to establish or join a regional or consolidated school district.

So forget Englewood. You would have denuded yourself of the power to be the Senate Education Committee, as well as denuding the courts of the ability to do anything about it.

Now I've talked about the nonoperating districts. They stick out, of course, 20 or 30 of them. But think beyond that. There are -- somebody will have the number -- 60 or 70 regional districts in New Jersey, which incorporate a lot of towns, of course. There must be something right about it, because over a period of 40 years when these have been created, people have found that they work. Sometimes they have had to be encouraged to do it. Sometimes the Senate Education Committee, and indeed, the courts or the Governor, have had to give them an incentive to do it.

There used to be -- Senator Ewing will recall -- a piece of legislation in the statute book to provide aid; regional aid, aid to regional districts -- that phased down over a period of five years in the '70s. That accomplished great things. If you had a barrel of money, which I know you don't, that's one of the things that someone would suggest to you that you consider: making aid available to assist districts that rationally ought to get into regional structures. If you pass this thing, you can't do it.

Nonoperating districts, 20 or 30 of them: Think beyond that. There are, I will bet you, 100 districts that are operating districts that are not part of any regional structure and that do not have a K to 12 system of their own. In other words, they have a K to something -- K to 8, or K to 4, whatever it is -- school within their boundaries, and they send their children elsewhere. Approximately 100: can't be too far wrong.

Within that group there are all kinds and varieties of districts. And in an era when we're talking about trying to stretch a dollar as much as we can, I will suggest to you that if you will look at the budgets of those districts you would find per pupil expenditures not \$7000, or \$8000, or whatever it is on the average today in the State, but \$10,000, \$12,000, \$15,000, \$18,000, \$20,000 per pupil. And I daresay you'd go up to \$25,000 to \$30,000 per pupil being spent in some of those districts, because they have so very, very few children. There are districts with 25 and 30 and 35 children. Not a lot, but they're there. A terrible waste from any kind of public policy point of view, and you know, nobody has wanted to do anything about it so far, but maybe you will. And you ought to be able to if you want to, because it could make sense. It could make sense.

And you ought to be-- All I'm saying is, not that you should do this, and you shouldn't do that, but gosh, don't give

up the power to do it, for yourself and your successors who occupy these chairs.

So, I would suggest on both counts that the vitality of our State in the K to 12 picture, in the history that I'm familiar with, has depended not always on the exercise of the power out of Trenton. And Trenton has not always been all wise. All of us know that. But it has depended on the reservoir -- the existence of the reservoir of power here in this city, and I would hate to see anybody pull the plug on that reservoir.

Thank you. I'll be happy to respond to any questions.

SENATOR EWING: Any questions?

SENATOR LaROSSA: Just one, Senator. Mr. Wiley, do you have any -- when you said you were just guessing -- any substantive or any specific district that you can identify, public, in New Jersey that is costing in excess of \$20,000 a year per student?

MR. WILEY: Allenhurst is 30--

SENATOR EWING: They're a sending district.

MR. WILEY: Pardon me?

SENATOR EWING: They're a sending district, right? They're being charged a tuition, though, aren't they?

MR. WILEY: I believe it's Allenhurst that is 30. There's one that's supposed to--

SENATOR EWING: Sea Bright. I think Sea Bright is extremely expensive.

MR. WILEY: Yes. There are some that are in the 20s, yes. They're small, but they're there.

SENATOR EWING: Thank you, Steve.

MR. WILEY: Thank you, Chairman.

SENATOR EWING: Paul Tractenberg, Professor at Rutgers?  
P A U L T R A C T E N B E R G, ESQ.: Mr. Chairman and members of the Committee, I am pleased to be here. I'm glad to have the opportunity to share my views about SCR-23. As some of you know, I've been at Rutgers Law School since 1970, and my primary professional focus during that period has been public



education law. I've been heavily involved in litigation about and in the legislative and administrative aspects of many of the leading educational policy issues of the past two decades. Currently I'm assisting the Educational Law Center in its legal briefs in the case of Abbott v. Burke, and I am serving as cocounsel to the Englewood Board of Education in the case involving Englewood Cliffs and Tenafly.

I've agreed to participate in both of those cases because clearly, they involve major statewide issues of constitutional law and of educational policy. Those issues interrelate in important ways together. In my view, their resolution will have much to say about the future of public education in New Jersey. Indeed, they will have much to say about the future of race relations, government functions, and the economy of our State.

Against that backdrop, I'm here today to testify as strongly as I can against the adoption of SCR-23. I just want to, as an aside, react to a few of the things that Senator Cardinale said. I appreciate his candor, however, I have to wonder where he has been the past 25 years? He indicated -- I think I have this almost verbatim -- "We've achieved a wonderful educational system by local control." I wonder where Senator Cardinale has been for the past 25 years, since the Kerner Commission nationally, and the Lily (phonetic spelling) Commission in New Jersey warned us about the grave consequences of our moving toward two societies, separate and unequal. I wonder where he's been during all these years when people have noted the existence -- including our Supreme Court, I should add -- of two public education systems in New Jersey: one for the wealthy and suburban and white, and the other for the minority and inner city. I wonder where he's been during the 20 years we have been litigating school finance reform, and the Legislature has been legislating in the name of school finance reform? And where he has been-- Whether he has read fully, eight Supreme Court opinions on the subject? So, that's an aside.

I also have to say that it seems to me important to emphasize to you that there has always been considered to be a hierarchy of values that relate to education in New Jersey. It's not simply that all interests are equal and are equally weighty. And we have said, through our various organs of government for many decades, that issues of race and racial balance are a top priority issue in formulating educational policy.

So I think all things are not equal. We are talking about the most important-- I want to say, and in my prepared statement you will see a longer exposition about a kind of procedural point that I have come to feel very strongly about. This hearing is about a constitutional amendment. It's one of the weightiest responsibilities a Legislature in a State can discharge. I couldn't help but think about the strong criticism of Republican legislators about their Democratic colleagues, less than two years ago, for the unseemly haste with which the Quality Education Act was enacted into law -- signed into law. I and many others of a variety of political persuasions shared in that criticism, joined in it, agreed with it. Major proposed legislative action, it seems to me, requires and deserves full public consideration and input, and in turn, that requires ample notice and a full opportunity for the public to be heard. I think, actually, the model that this body has used with the Quality Education Act, conducting a series of public hearings around the State with substantial notice, ample time for people to be heard, is a good model.

So, ironically, I'm really here to complain, in part, about lack of notice of this very hearing. The notice was received by those who received it less than a week ago, for a few hours in one location in Trenton, during the work week. I think it's not really an adequate opportunity to solicit and receive the views of a number of people around the State who are interested in being heard on the subject.

And I say that even in light of Senator Ewing's kind offer to keep the record open for the submission of written statements for a week. I think there are many people who would have been here today, who would like to have an opportunity to speak directly and personally to this issue, but are not able to.

And I think, among other things, you should be aware -- and probably are well aware -- that this public hearing is different than most of your hearings in that it is specifically required by the Constitution because the business of the day is a constitutional amendment.

So, I urge the Committee to consider affording other members of the public than those who could make it on short notice and to this location, an opportunity to be heard. I know from my own contacts there are many people around the State, some of whom, I think, have communicated to the Committee a desire to be heard. And I say that, partly, because I think it is so crucial for the Committee and the Legislature to be as fully informed as possible before you act on SCR-23. You have to be aware of what it would do. And I think both Senator Cardinale's statement and Steve Wiley's statement have taken you some distance toward that, but I believe it's clear, and I think actually, Senator Cardinale's statement made that quite explicit; that SCR-23 is more about race than it is about education or school district structure. It purports to bar the State government, any branch of it including the judiciary, but including the Legislature, from requiring any school district to join a new or existing regional or consolidated school district.

Steve Wiley is the living proof that there has been one, and as far as I know, only one required regionalization in New Jersey's educational history; that's the Morris School District. It was formed because our unanimous State Supreme Court said racial balance is a top State constitutional

priority. Racial balance can be achieved in the context of Morristown and Morris Township only by consolidation of those districts. That has taken place.

And incidentally, had there been more notice of this hearing -- and I hope there will be more opportunities to be heard -- I believe that the Superintendent of the Morris School District would have been here to testify against SCR-23 based on his particular perspective, being the educational leader of a district which is the product of required regionalization.

To complete the record, and I think it is important for you to have this perspective, there were regionalization efforts made in the 1970s, subsequent to the Jenkins case in Morristown, by the New Brunswick and the Plainfield school districts. They did not succeed before the Commissioner and the State Board, and they chose not to pursue the case through the courts. I think the consequences of that choice are there for all to see. We have two districts with pupil populations in New Brunswick and Plainfield, especially at the high school level, which are almost 100 percent minority. Those districts, although they are working hard, are working with great frustration and are unable to provide their students with the kind of education that they would like to be able to do.

So I think the sharp contrast between the one example of required regionalization, which by everybody's acknowledgement is a great success educationally and otherwise, where there is a stable, racially balanced population of students, where the town in which the regionalization resides-- As you've heard from Steve Wiley, it's a vibrant and booming town. Contrast that to Plainfield and New Brunswick and their schools.

The Englewood case, involving Englewood Cliffs and Tenafly, has been litigated since December 1985. It is now awaiting decision before the Appellate Division of the State courts. And there are several other cases pending in the

process, and you'll hear from some people representing those districts; notably, Asbury Park. These cases seek to make real what has long been New Jersey's strongly stated constitutional commitment and ideal; that is, that being educated in a racially balanced setting, wherever that's feasible, is essential for the education for all children. And I emphasize "all children." White children as well as black and Hispanic children will benefit from being educated in a racially balanced setting. They will be harmed by being educated in a nonbalanced setting, in a racially imbalanced or segregated setting.

Ultimately it's essential not just for our children, for our children will be our adults. They will be the backbone of our society and State. It is essential for our State if we want it to succeed as a vibrant, unitary, multiracial, multicultural society.

Regrettably this State has been very bad at translating some very impressive constitutional pronouncements into educational and social reality. The fact is that New Jersey's public schools are consistently rated the fourth most segregated public school system in the country. That's a tragic commentary on what we have failed to accomplish. This means a huge proportion of our minority children are being educated, or in many cases miseducated, in segregated school districts. And it means a huge proportion of our white students are being denied the exposure to people of a kind that they will have to deal with in the life that awaits them after school.

The ultimate answer to this huge problem may be, as Senator Cardinale suggested, residential desegregation. And maybe some day we'll be bold enough to approach that. But I think in the meantime, the State's education authorities and the courts should not be stripped of their authority to rectify the problem in particular circumstances where district

consolidation is both necessary to achieve racial balance, and is educationally and logistically feasible.

I think you also have to understand-- I want to underscore something that Mr. Wiley alluded to, that the amendment proposed by SCR-23 would not only deal with the State Commissioner and State Board and their authority; it would not only deal with the courts and their authority; but it would also prevent the Legislature from reorganizing the State's public education system to achieve racial balance, or for any other reason. And in the face of a strong recommendation from the Quality Education Commission that school district reorganization be considered for reasons of efficiency and cost saving, it seems to me SCR-23 would write into the Constitution the existing-- And I have to be honest, I have 611, Steve says 620. I'm not even sure we know how many districts we have, and that's, itself, an interesting commentary.

SENATOR EWING: The Department doesn't know, either.

SENATOR LaROSSA: It's been a running joke.

MR. TRACTENBERG: But it does seem to me, at a time when flexibility and creativity are being called for to meet the challenges of Federal and State educational initiatives, SCR-23 would opt for rigidity instead of flexibility.

For all these reasons, I think it is absolutely the wrong approach at the wrong time. It should be strongly rejected by the Legislature, and to the extent this Committee has any continuing influence on the Legislature as a whole, I hope it will use that influence to argue for the rejection of this.

More than ever, what is needed from you -- you as individual Senators, you as members of this Committee, you as members of the Senate and the Legislature -- is farsighted and courageous leadership, inspiring in your constituents their best qualities rather than conduct which would pander to your constituents' basest instincts and fears. And I hope that I

can join with you in an effort to accomplish that. I thank you for your time. I'll be glad to try to respond to questions if there are any.

SENATOR EWING: Senator Ciesla?

SENATOR CIESLA: Nothing, Mr. Chairman, thank you.

SENATOR EWING: Paul, I think there are amendments made to the bill sometime in May, and I think you would realize that we have to have a hearing within 20 days, so those who are interested as you are, would certainly be appraised that there would be a hearing coming up.

MR. TRACTENBERG: Okay. Well I--

SENATOR EWING: So I mean-- Well, excuse me. You were condemning because it was done so quickly and everything, and there was so little notice.

MR. TRACTENBERG: If I can ask a question of you? Does that mean there will be a subsequent hearing about the amendment?

SENATOR EWING: No, no. This is going to be the only hearing.

MR. TRACTENBERG: Oh, okay.

SENATOR EWING: As I said before, written testimony can be put in, so if you have other individuals or groups who want to send written testimony, they certainly can forward it.

MR. TRACTENBERG: Well, there are many. There are some who I hope have already communicated their views or their wish to be given an opportunity to express their views to you or to Committee staff. But I've talked in the last week, since I've heard about this hearing, to many people who are unable to be here for a wide diversity of reasons including Jim Cullen, who was cochair of the Quality Education Committee, and Judge John Gibbons, and other, I think, very distinguished citizens of the State, who treat this as a matter of high priority.

SENATOR EWING: Thank you very much.

Mayor Maronson, Mayor of Englewood?

MAYOR DONALD ARONSON: Thank you. It's Donald Aronson, Mayor of the City of Englewood. It's an honor and a privilege to testify, or to speak before you. I cannot be as articulate as my two predecessors. I'm just going to--

SENATOR EWING: You're not a lawyer, are you?

MAYOR ARONSON: Not at all.

SENATOR EWING: That's good.

MAYOR ARONSON: And it's obvious.

SENATOR EWING: We'll understand you better.

MAYOR ARONSON: I'm a practical person who has been interested in this particular piece of litigation that has been before the courts. I have been critical of my own community in spending the kind of money that we have spent, and our neighboring communities in litigation, in the kind of money that has come forth in defending and being necessary to defend something that has been very dear to us; and that is, the diploma of Dwight Morrow High School.

Englewood's educational system was tested, or had to be tested because of this litigation. The courts up to now have ruled on a particular issue that Senator Cardinale has specifically said; that the system is inferior and dangerous. Those are words that he used in his statement. The courts have ruled that our system is not inferior. It is not dangerous. It is minority dominated. Now, that in itself does not mean dangerous. That in itself does not mean inferior, and we've tested this.

I appeared before seven Senators three weeks ago on the day of our March on Washington where Save Our Cities and Save Our Children were involved. And the expression that I used there was that we cannot afford Zip Code politics. If New York City burns, Englewood is in desperate trouble. If Englewood burns, Tenafly is in desperate trouble. We all need each other. And when we have pieces of legislation that are so framed towards segregation and maintaining segregation, we're in desperate trouble. We are one State; we are one nation.



Englewood spends a lot of money in its educational system. We talk about \$7000 an average student in the State of New Jersey. We spend \$11,000. Jesse Jackson visited Englewood three years ago, and he made reference to the fact that the average at that time was \$5000 in minority districts. And I pointed out to him in that year, "Reverend, we spend \$10,000." His answer was, "Let's talk about something else."

And I say to you specifically, we have a system in the State of New Jersey. We have a system that is predicated on judicial review. We have a Constitution in the State of New Jersey. Let it run its course. This is our responsibility, and obviously, when Senator Cardinale is talking about changing the rules, it's obvious because they're losing the game.

The answer, specifically at this particular time, I urge you to reconsider your taking this out of-- Well, it's out of Committee now. But bring whatever influence you possibly can have and reject this constitutional amendment. Thank you.

SENATOR EWING: Thank you, Mayor.

No, all the constitutional amendments will be decided upon -- will be voted as to which ones will come up on the ballots and which ones won't.

MAYOR ARONSON: Thank you.

SENATOR LaROSSA: Senator, may I ask a question?

SENATOR EWING: Oh, I'm sorry.

Mayor?

Senator LaRossa, I'm sorry.

SENATOR LaROSSA: No, just a curiosity question: With both Englewood and Englewood Cliffs, do you know right off the top of your head, do you know what type of districts they are -- K through whatever -- and what the total enrollment is between the two districts?

MAYOR ARONSON: Well, I know Englewood.

SENATOR LaROSSA: All right. That's fine.

MAYOR ARONSON: Englewood is K through 12.

SENATOR LaROSSA: Okay.

MAYOR ARONSON: We have 2200 kids in the classrooms. Actually, pre-K through 12, and if I had my way, pre-pre-K, but we're talking approximately 2200 children. Englewood Cliffs, 400 kids in Englewood Cliffs, K through 8.

SENATOR LaROSSA: Thank you.

SENATOR EWING: Thank you, Mayor.

John Henderson, New Jersey School Boards Association.

J O H N M. H E N D E R S O N: Thank you, Mr. Chairman and members of the Committee. Perhaps no organization has a more vested interest in legislation of this sort than the New Jersey School Boards Association. With over 600 boards -- actually 613, by the way -- our members--

SENATOR EWING: Operating or nonoperating?

MR. HENDERSON: Well--

SENATOR EWING: Never mind.

MR. HENDERSON: Okay. Our members are overwhelmingly in support of legislation to prohibit forced regionalization. In fact, since 1972, for 21 years, we have had policy on our books supporting legislation. However, in that policy is a statement saying unless the regionalization is required to protect the civil rights of children.

And there you have it. A School Boards Association which is 90 percent suburban and rural dominated -- we have one vote for one district, 92 percent suburban and rural -- doesn't want this amendment.

It is interesting, we note, that Senator Cardinale's Assembly mate in that district, Mayor Rooney, together with -- and I think he takes this as a compliment, Assemblyman Art Albohn, perhaps the most conservative member of the entire Legislature -- has a bill that we want which simply puts it in legislation precluding the Commissioner from ordering

regionalization. But even Assemblyman Rooney and Assemblyman Albohn wouldn't go so far as to deny the courts, and tamper with the separation of powers.

So, we ask you to-- We cannot support this legislation, even though we're perhaps the organization most affected by it. We would please ask you to reconsider, and likewise withhold your support for it. Thank you.

SENATOR EWING: Any questions? (no response) Okay. Thank you, John.

MR. HENDERSON: Thank you, Senator.

SENATOR EWING: Mitch Rosenberg? He's a Councilman from the City of Englewood. Is he here? (no response)

Lee Pfister, P-F-I-S-T-E-R? (no response) That's good. (laughter) Well, I want to announce right now, although it's a little bit later on, but I guess, as Paul said, we're slow in doing things here, but I am leaving at 4:00, but one of the other members will continue and I'll come back. I have a very urgent QEA meeting, which you know about QEA.

Kabili Tayari? Mr. Tayari is with the NAACP.

KEITH M. JONES: Correction. I'm Keith Jones. I'm the State President, and I'll be the spokesperson for Mr. Tayari and the State Conference.

SENATOR EWING: That's right. You didn't look like the same fellow I saw several months ago.

MR. JONES: I grew my mustache back, Senator.

Senator Ewing, Chairperson of this Committee, and members of the Committee and staff: I'm here, obviously, to respond to Senate Concurrent Resolution No. 23.

When I first reviewed the proposed amendment which is the subject of today's hearing, my reaction was a combination of incomprehension and disgust.

Do I really frighten you that much? Does my family frighten and offend you? Is there really that much fear, ignorance and suspicion among you and your constituents toward

my people, African-Americans, that you will go to such lengths to ensure that your children will not have to associate with ours?

These lengths include crafting this thing, this proposed amendment, SCR-23, which is blindly preclusive in nature, and which masks its true intent behind a statement which is shameful for the way it sets the truth upside down.

First, this statement posts some vague notion connecting educational effectiveness with something called "community identification," whatever that means, and it certainly is broad enough to mean nothing, or anything. Then it goes on to say that regionalization neither saves money nor advances other important societal goals. Well, the studies and experts I've come across all show that, in fact, regionalization does enhance cost-effectiveness, educational quality, and where the demographics apply, addresses societal goals such as ridding our State of educational segregation.

So, given the fact that New Jersey is one of the most residentially segregated States in the country; and given the fact that New Jersey's public school systems are also among the most segregated in the country; and given the fact that regionalization is one of the most effective potential tools for addressing segregation in certain kinds of school districts; what do we say about this amendment and its supporting statement which says that none of this is true, that regionalization addresses no important societal goals?

The most obvious thing to say is that apparently the sponsors of this amendment do not think addressing segregation is important. But do we also say that the whole rationale for this legislation is misleading? That it misrepresents the facts? There are, of course, all kinds of euphemisms in politics. All I know is that where I come from, when you do not tell the truth, then you are lying.

So let us not waste each others' time here. Let's be plain and clear about what is going on. I know, and you know, and everyone in this room knows that this amendment is about race. And I ask you to not even think about insulting my intelligence by claiming that this thing is about community identification, or local control. Let's be real. Those kind of rhetorical tags have always served as reactive verbiage operative only as a means to keep those people -- my people -- out of sight, and if possible, out of mind.

And let's continue to be plain and clear. It is also obvious that this proposed amendment has everything to do with litigation pending before the New Jersey Superior Court in that it would preclude the court from ordering regionalization, the only effective remedy for unconstitutional racial segregation in the Englewood, Englewood Cliffs, and Tenaflly public school districts.

This situation is a perfect example of the benefits of the regionalization remedy. It would leave all students in these towns eligible for every aspect of high quality college prep education. It would foster social learning needed to eliminate racial prejudice and stereotypes. And it would allow a cost-effective means to keep the student enrollment for the maintenance of the highest quality education.

We should be proud of New Jersey's vigorous constitutional policy against racial discrimination and segregation in public schools. We should also recognize the common sense ruling the State Supreme Court made 20 years ago, that regionalization is an appropriate remedy when it is necessary to vindicate the State's constitutional policies, and when it is reasonable, feasible and workable.

This is a common sense position which led to the landmark decision to merge the Morristown and Morris Township districts in 1971, a step which has not led to any social catastrophes so far as I am aware.

We are well aware that regionalization is not a cure-all, that it will not work in all situations. But it is an effective tool given the right circumstances. It just makes no sense at all to erase it from our agenda as a potential remedy for critical social problems such as educational segregation.

We deserve better than this. The people of New Jersey, all of us, no matter what our race, deserve better than what this proposed amendment represents.

This represents the worst kind of cynical political quick fix. This dishonest piece of legislation reflects a stooping to the lowest common denominator politically, a trading on the politics of racial divisiveness which has become more dangerously intensified in both our State and nation.

When we need leadership and vision from our elected officials; when we need long-term ideas and strategies to ensure social stability and economic progress; when we need leaders who will help set an agenda, and action which will allow us to finally realize our professed national ideals of justice and equality; what do we wind up with? We wind up with worse than nothing, with things like this amendment which only intensifies our problems by pandering to racial fears and ignorance.

For the people behind this amendment, the politicians and their constituents, I suppose it's okay to have us African-Americans, and Hispanics, too, with real healthy representation in areas like the military. Yes, we receive plenty of applause for fighting in wars. We can go to Kuwait; just don't come back to the suburbs.

And you people have no problem rooting our high percentage representation on your favorite baseball, football and basketball teams. Why this summer we'll even be racking up all those gold medals for the good old USA on very well integrated Olympic teams.

Yes, we can do all these things to protect and entertain, to say nothing of the truly substantial contributions we have made to our country's development, and which go fundamentally unacknowledged precisely because of educational segregation. But the one thing which apparently is totally unacceptable, so much so that you want to amend our State Constitution to protect yourself from this horrifying prospect, is to have your children exposed to a shared educational environment and experience with our children.

Does this make sense at all, on any level? Is this the kind of society within which we want to live? I urge you to reject the racial divisiveness, the political opportunism, the pandering to ignorance and fear which this proposed amendment represents.

All of the residents of New Jersey deserve better than what this proposal foists upon us.

I want to close on a very brief quotation, and I'm sure those of you who are educated and aware will recognize it: "The story of our inferiority is an old dodge, as I have said. For wherever men oppress their fellows, wherever they enslave them, they will endeavor to find the needed apology for such enslavement and oppression, and the character of the people oppressed and enslaved."

I thank you for the opportunity, and I will, of course, entertain any questions from you, the Chairperson, or members of the Committee.

SENATOR EWING: Andy, do you have any--

SENATOR CIESLA: I have nothing, Mr. Chairman.

SENATOR EWING: I hope we'll see you-- Will you be down Thursday with Kabili?

MR. JONES: I'm leading that delegation.

SENATOR EWING: You are? Where is Kabili going to be?

MR. JONES: He'll be there as well.

SENATOR EWING: But you're going to be the leader?

MR. JONES: I'm the President.

SENATOR EWING: Okay. What's he?

MR. JONES: He's Chairperson of our State Education Committee.

SENATOR EWING: Okay.

MR. JONES: And we look forward to sitting down and meeting with you on Thursday.

SENATOR EWING: Discussing the QEA, right?

MR. JONES: Yes.

SENATOR EWING: Thank you. Thank you, Mr. Jones, for coming.

MR. JONES: Thank you.

SENATOR EWING: Now, we have a whole group of individuals from Englewood. I think I will call on Dr. Oliver first, and then we'll bring up other people to testify and alternate back and forth to a degree.

H E N R Y O L I V E R, Ed.D.: Good afternoon, Senator Ewing, honorable legislators, ladies and gentlemen. I am Dr. Henry Oliver, Superintendent of the Englewood, New Jersey Public Schools. I am here to make an appeal on behalf of the present and future public school children of the State of New Jersey.

In an effort to focus the proposed constitutional amendment, SCR-23, on the goals of protecting home rule and promoting parental choice, other compelling needs were overlooked or ignored. Take as one example the need for institutions including public schools to foster intercultural and interracial understanding and tolerance and to serve as places where people learn to work together and respect one another. The recent tragedy in Los Angeles should remind us how important this is.

Today, June 8, 1992, 38 years after Brown v. Board of Education, the sleeping giant, separate but unequal, is symbolically awakened.



There is a tremendous benefit in having the nation's pluralism reflected in the schools where children learn to work together and respect one another. This same pluralism will be increasingly reflected in the workplace as we move toward the 21st century. Our nation's survival in the global economy necessitates the unleashing of the talent pool in its entirety.

Unknowingly or unwittingly, SCR-23 is deceptive. The voting public must be reminded that New Jersey is the fourth most segregated State in the Union as it relates to public schools. The prospects are tragic and alarming. Just think, if this proposed amendment comes to fruition, within a few years New Jersey may move from its fourth position to number one position as the most segregated State with regard to public schools.

Each person present today must recognize that the proposed constitutional amendment, if adopted, will accomplish the following: It will erase the impact of the Jenkins case through which Morristown and Morris Township were regionalized. It would tie the hands of the courts and the Commissioner of Education, and render them ineffectual insofar as desegregation is concerned.

This proposed amendment should be sent to the Senate Judiciary Committee for its consideration and report.

To narrow the focus a bit, I will now highlight the Englewood Public Schools.

The Englewood district is a restructuring district calling upon numerous efforts and resources to meet and go beyond the America 2000 proposal. The district is working with an RJR Nabisco Next Century Schools Grant, a Federal Department of Education grant for improving science and math teaching, and has amassed numerous partners: among them, CPC International, Panasonic Foundation, Simon and Schuster Publishing Co., the Lipton Company, Ramapo College of New Jersey, Bergen Community College, Fairleigh Dickinson University, and others.

The number of students going on to two- and four-year colleges and other postsecondary training is 83 percent and rising; well above the State average. It may come as a surprise to some that the Englewood public schools are predominately a district: 68 percent African-American; 21.6 percent 5.4 percent white; and 5 percent Pacific islanders.

Our students need and deserve an integrated education, as do the students in our neighboring, homogeneously white districts. If, given the record of accomplishments, desegregation can't work in the Englewood area, where can it work?

SCR-23 has the potential for blocking the important goals of eliminating segregation, improving educational quality, and saving money.

On behalf of the youth of Englewood and Bergen County, and indeed, the State, please consider these points before acting on SCR-23.

Thank you.

SENATOR EWING: Thank you, Dr. Oliver.

We'll next hear from Rob Broderick of the NJEA. Is Rob Broderick here? (no response) Is that him coming in? (no response) Well, good; not here.

Herb, you're up next. Herb Green, Director of Public Education Institute.

H E R B E R T G R E E N: But I come here speaking as an individual. I'm not speaking for the--

SENATOR EWING: No, I'm doing the titles because the press would like to know. So speak up if you're representing some other group or yourself.

MR. GREEN: No, just at this point, Senator, representing myself.

SENATOR EWING: Fine, Herb.

MR. GREEN: And I won't take much of your time because I wholeheartedly agree with the positions taken by all of the previous speakers, with the exception of Senator Cardinale. But I agree wholeheartedly with Wiley and Tractenberg and Aronson and Henderson and Jones and all of them. They've all said some pretty important things, I think. The only point I would add comes from some personal notes that I want to recount.

If Matty Feldman were here, he would have greeted me with, "Good afternoon, Admiral." He always does that, knowing that I was a midshipman and graduated from the United States Naval Academy quite a long time ago, in 1947. He calls me admiral; I never got beyond ensign, but Matty has the right to promote me.

But I just want to -- with some hesitation, but I'm going to go ahead -- recall my days as a midshipman, because I think it's relevant to what I also agree is the central point of all of this; and that's the race issue. I don't think we can get away from that, and I think it's central.

When I entered the Naval Academy in 1944, there were no minority midshipmen. There wasn't a single black midshipman. One who had been admitted some years before had been taken out to a buoy in Chesapeake Bay and been tied to it, and he died out there from exposure.

When we entered, the Naval Academy issued to us, among other things, the "Navy Song Book." And on Friday nights we would go down and sit on the gym floor and sing heartily, all these songs. I had forgotten this particular one. I guess I had put it out of my mind, and as I thought about in years later, I realized that I was so embarrassed by it that I just had blocked it out. And you'll see why.

The song is entitled, "The Coon Republic." This is the United States Naval Academy. I'll just give you the first part of it: "A solution to this vexing Chinese question is to start a coon republic out in China. Then act at once upon this

good suggestion. We know that we will never get a finer, we'll organize a hundred Negro regiments, and across the ocean on the chartered liner, we'll set an awful pace for the Mongolian race when we stand up on the shores of ancient China." And the chorus is, "When we start the coon republic out in China, every coon will have a laundry of his own. We'll be a blockhouse down in Asia Minor, and the president will live there all alone. We'll change the name of every town but Shanghai, and when we take Peking, we'll call it Dinah. The United States of Ham will be true to Uncle Sam, when we start the coon republic out in China."

Now, as a plebe, the guys were singing that without any minority kids around. But two years later, the first black midshipman to enter the Naval Academy, and as it turned out, to graduate from the Naval Academy, entered. He was handed the same song book, and while there was no assault on his physical being, this had to be a dreadful assault on his spirit.

And it's that kind of assault on the spirit of minorities in this country that we have been willing to live with for a very long time. And whatever message is intended by anybody with this particular constitutional amendment, it's an assault on the spirit of a large number of New Jerseyans, and I think that you ought to think seriously about that.

Paul Tractenberg mentioned Plainfield, and I'm a resident of Plainfield, and have been for 36 years now. And I've been through all of the problems that Paul talked about, from the time when the Plainfield public school system was a predominantly white, highly regarded school system to the time it went through a transition, and in effect, went through a period of internal regionalization. There was a strong effort, 21 years ago, to try to sustain the balance in the school system by resegregating the schools. The move had already started to desegregate, and the move came from some leading political figures in Plainfield to resegregate them; to hold on

to the white population -- to the Caucasian population -- by making three of the eight elementary schools predominantly white, and keeping them that way. There was a big battle, and I was in the middle of it.

They lost. The Board of Education voted to desegregate, to continue the desegregation program. I testified and said a lot of things, and I'm not going to read them, but one thing I said was that the advocates speak of their dedication to an integrated society, but they seem to ignore the fact that their argument involves the perverse notion that the way to bring two groups together is to separate them further.

That's, in effect, what they were saying. They all stood up there and beat their breasts about their dedication to an integrated society, but they said, "Let's build a few walls so that it doesn't get too integrated."

I suspect that's what this is all about, too. Political leaders all over the State almost automatically testify to their commitment to integration to a society that will bring us closer together. And I don't know how we can do that by putting up obstacles. We can't erect obstacles and then say that we are for integration.

And I think that the distinction is, that desegregation is not integration. Integration is something else and suggests to me that it's something that we've all got to work at, and it's got to be political leadership, if you will. It's got to be parents. It's got to be school administrators. Everybody has got to be about this business of sending out the message.

And I think that may be a great challenge, that instead of this constitutional amendment, what you ought to be initiating is an effort to come up with some bright ideas about how we get over these obstacles that already exist, and to

challenge everybody in the State; to challenge people in our suburbs to think about these issues as seriously as some of the speakers you've heard from today.

Senator Bradley concluded his now famous speech on cities in the United States Senate on March 26th with this paragraph. He said: "What we lose when racial or ethnic self-consciousness dominates are tolerance, curiosity, and civility, precisely the qualities we need to live side by side in mutual respect. The fundamental challenge is to understand the suffering of others, as well as to share their joy. To sacrifice that sensitivity on the altar of racial chauvinism is to lose our future. And we will lose it unless urgency informs our action; passing the buck stops, scapegoating fails, and excuses disappear. The American city needs physical rejuvenation, economic opportunity, and moral direction. But above all what it needs is the same thing that every small town needs, the willingness to treat another person of any race with the respect you show for a brother or sister, with the belief that together you'll build a better world than you ever would have done alone, a better world in which all Americans stand on common ground."

And so I would conclude by restating my opposition to this resolution, and to note that if we go forward with this, and we continue doing things the way we always have with regard to this great American obsession with race, that the result will be what some psychologists jokingly call psychosclerosis -- hardening of the attitudes. And it will just get to the point where it's terminal hardening of the attitudes unless those of us who are around now take the opportunity to change things.

Thank you very much.

SENATOR EWING: How long did it take to get that song out of the song book, or is it still there?

MR. GREEN: Well, I don't think it's still there. If it were now, given the composition of the United States Naval

Academy, progress has been made. But you know, we still assault the spirit in many different ways, Senator, and it's a painful thing. I saw the expression on your face, and I knew that you would react that way.

If I could, just one other word on this: While I did end my distinguished naval career within a year after graduation because of a bad knee, I've stayed very close to many of my classmates, who most of whom are now retired captains and admirals. And every six months, in northern New Jersey, we have a reunion -- a dinner. Just six weeks ago, my wife and I were the host for our group. We sat around talking and somehow the issue of race came up -- they're New Jerseyans just as the rest of us -- and they started talking about this thing. And sure enough, the discussion went back to our days as midshipmen and the experience of Wesley Brown, the first black guy I had mentioned who went through the Academy. There was some bantering back and forth and one guy thought that he had probably been given a flunk proof curriculum; they were going to get him through one way or another. And they launched off, as retired admirals tend to do, with, "Harumpf, harumpf, harumph." I kind of lost track of what they--

SENATOR EWING: Like old politicians?

MR. GREEN: Like old politicians. But I sat back and thought and then I said, "Let me remind you of something about those days." And I reminded them of this song, and you know they all remembered it. They all hung their heads down. They were mortified by it; they were ashamed that they participated in this. It kind of tore at their heartstrings. They were part of this particular America.

So let's hope it's changing. We know all too well that it hasn't changed fast enough. We've got a long, long, long way to go before we stop assaulting the spirit and the souls of people. We're still doing that.

But maybe we can move forward. These fellows certainly sat there and shook their heads and didn't want to deal with that subject any further.

SENATOR EWING: Thank you, Herb.

MR. GREEN: Yes, sir.

SENATOR EWING: Rob Broderick, NJEA?

R O B E R T P. B R O D E R I C K: Thank you, Mr. Chairman and members of the Committee for this opportunity to speak on SCR-23, especially in the middle of a list of such distinguished witnesses. I was going back and forth between the committee meeting next door and this meeting, and the Assembly Education Committee just released a bill, S-799, which basically forces the Borough of Fieldsboro to regionalize with the Bordentown Regional School District. Fieldsboro is one of those nonoperating school districts that Senator Wiley referred to when he spoke so eloquently. If this bill -- or if this constitutional amendment -- had already been passed, that bill would not be possible. The Borough of Fieldsboro would not have recourse, and neither would the regional school district that it's attempting to join. So there's an irony here that we're having two committee meetings with two contradictory purposes.

I'm not going to read through the statement. It's pretty self-explanatory. Basically, NJEA policy calls for voluntary regionalization, not forced regionalization. We think that the issues of school districts are best decided locally, and we believe that regionalization should be a voluntary and local process.

However, having said that, we have two concerns about SCR-23. One is, we are not sure what the penalty referred to in Part 3 of the proposed ballot question, what that would be? Does this mean that a district would not lose State aid if it declined to be regionalized? Or does it mean that their State aid would remain the same? Or does it mean that they won't be



fined or otherwise penalized? We think that that is an uncertainty in the proposed ballot question, and I think that other speakers have spoken to that.

Our second concern is the same concern that many of your witnesses have already raised; the whole question of racial imbalance. Since we live in a time when we're arriving at some very unpleasant and dangerous conclusions about ourselves, we see that our efforts to build a society in which people of all races and creeds and colors are treated equally and fairly have not been entirely successful. We still hold out the hope that our public institutions, including our schools, can play a role in educating our children about the dangers of racism, discrimination and separatism in this country. Because of that, we have to question the portion of the proposed amendment that would have the legislative branch of government forbidding the judicial branch to act in a sphere which, at its core, involves questions of social justice.

Certainly, the Federal courts won't be bound by our State Constitution, so Federal remedies would still be available to plaintiffs who felt they were the subjects of discriminatory racial practices in education. Whether State courts would rule that this prohibition would be constitutional would be another vexing question. But if history is any guide, we can be sure that challenges would be forthcoming.

NJEA believes that it's crucial that we ask ourselves now whether we want to risk further divisions in our society at this trying time by trying to forbid our judiciary to remedy the effects of racial discrimination. We believe that this is not the time to raise those sorts of questions, and we urge that this portion of the proposed amendment be deleted.

Thank you.

SENATOR EWING: Thank you, Rob. Any questions?

SENATOR CIESLA: I have none, thank you.

SENATOR EWING: Miss Penny Coleman, Board Vice-President from Englewood? (no response) All right. Tom Jannarone, Superintendent of Asbury Park?

R. T H O M A S J A N N A R O N E, Jr.: Thank you, Senator. This is an issue that I personally have struggled with for many years. I have been in Asbury Park since 1967. As a matter of fact, with me today are some parents from Asbury Park -- the community of Asbury Park -- and our Board Attorney, and one of our building principals, who is going to retire, who also is active in the NAACP. Two of them are on the list that I think you are going to hear from.

Over the 25 years that I have been in Asbury Park I've developed an identification and a pride in working there. And I'll tell you, I have learned a great deal, probably more by working in Asbury Park than I could have if I had stayed in the suburban, middle-class community where I started my teaching career.

I'm here, basically, for three reasons that I want to express to you. One is that I'm very concerned about government. I'm concerned about the atmosphere that we've kind of created in this State and in this country, where we react to things that happen or are said on 101.5, where we react to things that are said by Hands Across New Jersey, or whatever group. And we've developed a kind of a knee-jerk reaction to solving problems, and a kind of participatory crisis rather than planning on a policy basis to deal with problems of the State.

The second reason why I'm here is to react to and explain to you my feelings about having to work in a segregated society. As I said to you, I've worked in the City of Asbury Park for 25 years. Other speakers have mentioned to you, and I'm sure you know already, that New Jersey holds the dubious distinction of being one of the most segregated systems of education in the country. And many people are surprised at

that because they automatically think of the South and not the North. One of the other top four is the State of New York, which in and of itself is interesting.

The third reason why I'm here is to talk about the proliferation of small districts that also has been mentioned, and some of the harm that comes about from that.

Now, in the statement that was part of the question to be put on the ballot, there is a statement which says, "Forced regionalization reduces educational effectiveness by minimizing community identification with the schools, while neither saving money, nor advancing other important societal goals." I don't think that that statement is true. My experience says to me that it is not true. While it may be true based upon certain facts in certain communities, it is not generally true, and should not be accompanying any proposal like this.

When we deal with segregated schools I think we communicate a message to people similar to the message that Herb Green was giving you a personal experience about, where we assault the sensitivities of people. I sat in and was involved in, I think it was, 43 days of hearings in a similar case between Asbury Park and its sending districts. We have seven sending districts to Asbury Park. Two of them are nonoperating, Allenhurst--

I think Senator LaRossa asked a question of one of the other speakers about the cost per pupil. Allenhurst is one of our communities where they would prefer to spend that kind of money per pupil, rather than send pupils into Asbury Park.

I'm glad that Senator Cardinale at least has been honest in putting forward his reason for sponsorship of this; and that is, because of the threat of the Englewood/Englewood Cliffs decision. If, barring that legislation, this constitutional amendment--

I think the Mayor of Englewood said that perhaps the rules are being changed because certain people are losing the

game. But barring any changes, the Asbury Park, Belmar, Bradley Beach, Avon, Deal situation is the next case in line. The facts are almost identical. The white flight pattern is almost identical.

I think that kids who go to school in isolation, lose. And that's not only pupils in Asbury Park, but those other pupils in our surrounding communities that are predominantly white. I think that to ask children across this State to go to school in isolated, segregated schools -- and isolated not only sometimes by race, but also isolated by economic background, or language background -- to ask them to go through a system of education and then go out into the world and compete on an equal footing, or to go out into the world and form productive, cohesive relationships with their colleagues at work or in their community is taking an ostrich-like approach. It just doesn't work that way. We expect more of kids than we ourselves are willing to do. We can't continue to operate segregated schools in the State of New Jersey.

Now I am convinced that the way to overcome that is generally through a voluntary kind of approach. However, without the undergirding of a Supreme Court decision, or a legislative act, or the act of a Commissioner of Education, or an act of the administration, I can tell you from experience that people will not voluntarily come together to solve those problems. They will react if someone else sets a policy and sets a goal, and puts it on the table and discusses it, but unless you can provide them with some incentives, or with some kind of a threat, you will not make progress. And we in Asbury Park and our sending districts, and Englewood and Englewood Cliffs are testimony to that fact.

About three weeks ago I went up and played golf at the Knickerbocker Country Club. Now I know from people who are members of that club that one of the factors that concerned them was that in the Englewood/Englewood Cliffs situation, if there was a new school district carved out, that part of the

golf course would be taken to build the school. Now I don't know how real that is. I haven't talked with anyone from Englewood about it, but that's some of what's communicated to me.

We all in this room, particularly those of us who are white, know when you go to social gatherings or you meet with friends or whatever your community is, you know what attitudes are out there about race. And even people with the most lofty goals sometimes adopt a, "Well, not in my neighborhood," kind of approach to it.

We have in this State a proliferation of small districts, some nonoperating, some operating with small enrollments. Deal, a neighboring community to Asbury Park, pays 16 cents per hundred, equalized value, to support education. They have 50-some odd pupils, and they operate a school.

Now, I'm not picking on Deal. As a matter of fact, we have a better chance of working with the people in Deal to solve some of our problems than we do with some of the other communities. But I use them as an example, perhaps because we have a fairly decent relationship. However, one of the reasons why Deal is willing to work with us is because of the threat of what will happen to them and to their school if they do not work with us. And that threat is very simple. They're an operation not with 50 pupils, but with 150 pupils, because they accept tuition pupils from other communities. They know, based on prior court decisions, that we can disrupt them and perhaps, we can put them out of business. Therefore, we have a willing partner with Deal to solve some of the problems.

In Asbury Park and its sending districts, there are at least 47 board members, probably more because I'm taking a guess as I just ticked them off as I was sitting listening to some of the other speakers. Local control can be carried to an extreme and can lead us into a situation where we are not

dealing with a system of education effectively. We're not dealing with programs effectively. That money is wasted. And in this statement, to say that forced regionalization as opposed to voluntary regionalization will not save money, there's just no basis in my mind for that. Every one of our sending districts has a board secretary and business manager. Every one of our sending districts, except for the nonoperating ones, have superintendents of schools. There has got to be cost savings. There is just no way around that. I just can't-- I would have to be shown in facts and figures how it cannot devolve into a cost saving, more efficient situation.

I'm talking in our situation about a mile wide corridor with about six miles from north to south. And you've got ingrained kinds of problems where-- You know, our society, if this is replicated and allowed to continue, our society is going no place.

Over the 25 years that I have been involved in this, we have not made much progress. As a matter of fact, we've developed an atmosphere lately where people feel secure in talking about race and in expressing attitudes that maybe 10 or 15 years ago would have caused all of us to cringe. I think we need to do something about that, which takes me to my third point; and that is the role of the Legislature, and the role of the courts, and the role of the Governor, and the role of the Commissioner of Education. I am very much concerned about what's happening in politics and what's happening in the general public.

There was a superintendent, a friend, who was working in a district, and basically, he was not successful there and he was run out of town. But he had a cartoon hanging up on his wall, and maybe you've seen it; and that is, with a man frantically running ahead -- trying to stay ahead -- of a gaining mob. The caption was something like, "If you stay

ahead of them, it will look like you're leading them." I am very much concerned that that's the kind of situation that we're in.

When I vote-- I live in Point Pleasant, so when I vote for a representative, I expect-- I believe in a representative government. I expect Senator Ciesla to represent me. I expect him to be able to make-- First of all, have the authority to make tough decisions. I expect him to make them on my behalf. If he does something, or there's something coming up that I disagree with, I'll let him know. Senator Ewing, we've seen each other how many times in the past several months? So, I can express my point of view. I'm thankful for that. I appreciate you facilitating that process.

This proposal abrogates that responsibility. I see a legislator as having a responsibility to provide leadership. This proposal neatly would take you away from a leadership position because it reverts back then, to the perception of the public. It's interesting to note that no one in here has spoken or raised a question about whether or not it would pass if it's put on the ballot. I think all of us in here understand what will happen if it's put on the ballot, and that's significant.

I don't think anyone in here realistically thinks that, "Well, the general population of the State of New Jersey will not vote for this," okay? They will vote for it. And that's a commentary on how little progress we've made in terms of racial relations.

Senator Cardinale has at least been forthright in saying that this is aimed at preventing a decision to cause Englewood and Englewood Cliffs to merge. And I think in recognizing that, in and of itself, that statement should lead us to the conclusion that it should not go on the ballot, that the proposal should end here in Trenton and not go out to the general public, because the expectation that I have from

politicians is that they have not only the right to make decisions, but they will have the gumption and the fortitude to make informed decisions. Unfortunately, the general public many times does not make informed decisions.

So my plea to you is that for three reasons that you do whatever you can to prevent this from being a public issue. Number one, that we operate one of the most segregated systems of education in this country. Instead of this approach, we need to be developing policy to overcome that. We need to recognize that as an issue.

I guess as a sidelight, it's like being an alcoholic and going to an AA meeting and saying, "Hey, my name is Tom Jannarone. I'm an alcoholic." I think we have to get over that denial that we're in in this State, and we need to recognize that one of our problems is segregated education in New Jersey.

The second reason why I think that this proposal should not go forth is that the efficiency of our 613 -- or whatever it is -- school districts is in serious question. At a time when we need to do things in as cost saving a manner as possible, I think we need to examine that. This proposal would prevent us from examining that.

And the third reason is, I plead with you personally to exert political leadership. I expect that of you when I cast my vote. I expect the politicians to look at public policy issues and to do whatever is necessary to overcome them and to develop a better New Jersey, not solidify the kind of New Jersey that we currently have with all of its problems.

Thank you.

SENATOR CIESLA: Thank you very much, Tom. I just want to let you know, Tom, that comment that you made is particularly pointed. I hope not true, though.

I think we have someone here from the Public Advocate. Mr. David Sciarra, is it?



D A V I D   G.   S C I A R R A: Thank you, Senator. I am David Sciarra. I'm the Director of the Division of Public Interest Advocacy in the Department of the Public Advocate, and I'm here on behalf of Wilfredo Caraballo, the Public Advocate of New Jersey.

Before I begin my statement I want to make a comment about something that Senator Cardinale said. He basically accused the Public Advocate of creating the Englewood situation. I have to say to you, as you've heard from the witnesses here, that really nothing could be further from the truth. The Englewood case was started in 1985 by the Englewood School District. Actually, to tell you the truth, it was started by the Englewood Cliffs School District. The Englewood Cliffs School District decided it wanted to terminate its sending receiving relationship with the Englewood School District. Englewood, in response to that, went back to the Commissioner of Education and opposed Englewood Cliffs' efforts to terminate that sending and receiving relationship and said that, in order to create an integrated school system you should consolidate the Englewood School District with Englewood Cliffs and Tenafly.

The Public Advocate only became involved in this case when it got to the Appellate Division. We filed an amicus brief -- a friend of the court brief. Basically, in that brief, what we said was that the Supreme Court had the power, and actually we said, that the Commissioner of Education had the power and the duty to address segregation in the schools when and where he finds it. In this case there had been an exhaustive, many months created record before an administrative law judge. There was absolutely no dispute that the situation among these districts was, in fact, segregating, and that action had to be taken.

The Commissioner of Education did not order regionalization to begin with. He ordered a voluntary plan which turned out did not work. As a result of that, the

Commissioner of Education has, finally, not even ordered regionalization in that case yet. He has ordered a study of regionalization in that case.

So we need to be clear about the facts about Englewood. There's a lot of talk about what's going on in Englewood. We need to be clear that so far what's happened is, is the decision by the Commissioner of Education to order a study of regionalization because voluntary measures at desegregation have not taken place. Our brief with the Appellate Division simply said that the Commissioner has that authority to order regionalization if appropriate.

It's important to know that, because as Mr. Wiley pointed out, it has been over 20 years since the State Board of Education has ordered such relief. In fact, the only time it's been done is in the Morristown case. It hasn't come up since that time until the Englewood situation.

So this is not the kind of a situation where the Commissioner has run around the State, as some might have you believe, ordering this district to be regionalized and that district to be regionalized. That's not the way it's happened. It's happened in these instances very carefully and after a very -- as I point out, only twice now, in fact, really only once, and the Englewood case may be the second time -- and after a careful study, evaluation, hearings and due process for all involved.

But I'm here to urge you to -- for the Senate to -- reject this proposed amendment, because it deprives the Department of Education of the powers that are essential to ensure the children of New Jersey a quality education, the kind of education they will need to become contributors to the New Jersey of the future. It also denies the Legislature the power to make the State's public school system more effective and less expensive. And significantly, it will guarantee that New

Jersey schools will be racially and ethnically segregated for the foreseeable future, to the detriment of both whites and minorities alike.

Let me take each of these points separately. First, this amendment could undermine the constitutional guarantee of a thorough and efficient education. Sometimes merging or combining school districts is the only practical means to assure school children a quality education. As has been pointed out, we have very many small school districts. Sometimes these districts become overwhelmed. Its schools become so decrepit or obsolete, or its program becomes so deficient that it ceases to provide even a minimally adequate education. In some instance, the district simply does not have the capacity to pay for, or to manage the capital or operational improvements necessary to bring its schools up to minimally acceptable standards. Under these circumstances, merging the district with one or more adjacent districts may be the only realistic means of assuring that the children continue to receive an adequate education.

Let me give you two examples where this has occurred. These examples are interesting because if this amendment were to pass, the Commissioner would have been unable to do this.

In 1979 the Commissioner of Education found that Jamesburg High School, which was the State's smallest public high school, was not providing its students with a constitutionally adequate education. The Commissioner further found that, despite the best efforts of its board and staff, this district was not capable of doing so in the future. He therefore ordered the school closed and directed that the students attend schools in surrounding districts. He imposed this solution over the objections of Jamesburg and the other affected districts. If this constitutional amendment were given its broadest possible reading, the State could not have

imposed any interdistrict remedy in this situation. Instead, it would have had to stand by helplessly while children suffered.

Let me give you another example in Phillipsburg. There, in 1976, the Commissioner ordered Phillipsburg and five adjacent school districts to formulate a regional plan for secondary education. Phillipsburg was the receiving district for secondary school students from the five adjacent districts. Its high school was very overcrowded, and the districts were unable to agree on either a plan to enlarge the high school, sever the sending receiving relationship, or to establish a regional district. The Commissioner of Education found that the degree of overcrowding was denying high school students in those districts a constitutionally adequate education, and he ordered the six districts to formulate a regional plan. Under even the most narrow reading of SCR-23, the State could not have imposed this remedy.

And let me tell you, by the way, in the end, the Commissioner's order did not have to be implemented because as previous speakers pointed out, the threat of that action being taken induced these districts to agree on a plan to enlarge the Phillipsburg High School.

Even though this power is only rarely invoked, it is essential to assure that children receive an adequate education. The State Department of Education must have the power to merge or combine school districts where necessary, and a vote for SCR-23 is a vote for denying the State the power it needs to assure that all children receive a quality education.

My second point has been alluded to already, but I want to touch on it a little more because I think it's important; and that is, this resolution will tie your hands -- the legislators' hands -- and prevent you from making rational decisions about important and difficult educational issues. We have 611 school districts on our list, but-- And this is

undisputed. This is more than twice as many as any other state in the nation. Think of that, twice as many as any other state in the nation. I hear it's three times, somebody just said to me. That's an astounding fact that you have to consider.

Many of these districts are very small. Our data shows that approximately 200 districts have fewer than 1000 students. Some experts have concluded that the multiplicity of small districts in our State is undesirable both on educational and economic grounds. Small districts are incapable of providing sufficient breadth of curriculum, and of meeting the diverse specialized educational needs of their students. Moreover, the fragmentation, duplication and inefficiency of having so many districts makes New Jersey's educational system wasteful and costly. As a result, some, including the Quality Education Commission, have urged that New Jersey move toward the consolidation of these small school districts.

This is clearly a complex policy that is going to require a careful and subtle weighing of the facts. SCR-23, however, ties your hands. If enacted it would remove from the Legislature the discretion to make policy through careful weighing of these facts. Instead, it establishes as a matter of constitutional law that the State cannot require consolidation of inefficient or ineffective districts even if the Legislature determines at some future time that this is the wisest and most beneficial course. A vote for SCR-23 is thus a vote of no confidence in the ability of the Legislature to make policy in this area.

The third reason is that this resolution would undermine our constitutional prohibition on racially segregated schools, and our guarantee of equal educational opportunity.

Many New Jersey schools are now impermissibly racially segregated. Black and Hispanic students are now disproportionately concentrated and isolated in a small number of school districts that are predominantly minority.

Let me give you some facts about this: Approximately 30 percent of the children in New Jersey's 591 operating school districts are black or Hispanic. There are, however, 39 districts -- only 39 districts -- in which more than half of the enrollment are black or Hispanic. Although these 39 districts enroll less than a fourth of the total school population, and only 5 percent of the State's white students, they include two-thirds of all black and Hispanic school children in New Jersey. For the average black or Hispanic child in these school districts, only 12 percent of his or her classmates are white.

Let's look at 26 school districts -- the highly impacted 26 school districts -- and you get another picture. Seventy percent or more of those 26 school districts are black or Hispanic. Although these 26 districts include less than a fifth of the State's school enrollment, and less than 3 percent of the white students, they include about 60 percent of all black or Hispanic students. For the average black or Hispanic student in these schools, less than 10 percent of his or her classmates are white.

As has been pointed out, we are the fourth most segregated school system in the country, far more segregated than Alabama, Georgia, or Louisiana. Racial segregation in New Jersey's schools is becoming worse rather than better. The proportion of minority students attending predominantly black and Hispanic schools has continually increased since 1968.

This is not mere happenstance. These schools are segregated because our communities are segregated. Blacks and Hispanics make up 22 percent of our State's population. Most blacks and Hispanics in New Jersey are concentrated in 26 municipalities that are more than 50 percent black and Hispanic. By contrast, these 26 municipalities have only 20 percent of the population as a whole.

This pattern of racial segregation is only sometimes the product of chance or voluntary choice. It is often fostered by private discrimination, a wide variety of governmental policies including exclusionary zoning, governmental policies on the siting of subsidized housing, and public and private redlining.

Racial segregation in New Jersey's public schools violates the principle of equal opportunity for all. It is harmful to whites as well as blacks and Hispanics. It makes it impossible to teach interracial cooperation and tolerance, indispensable skills for whites as well as racial minorities in a society that is increasingly heterogeneous and multiracial. It undermines the teaching of civic values to white and minority students for it communicates, however unwittingly, the message that equality of opportunity is a matter only of words and not of deeds.

New Jersey is a multiracial society and becoming increasingly so. Genuine racial integration of the public schools is a necessary condition for learning and teaching interracial tolerance and cooperation. If white students attend schools where there are no blacks or Hispanics, and black and Hispanics attend schools where there are no whites, this indispensable condition cannot be met.

Studies show that segregated education is unequal education. It imposes upon minority children a sense of stigma and inferiority that undermines the educational process. It isolates them from the mainstream of society and denies them both the opportunity to test themselves against members of the white majority, and the confidence borne of experience that they can successfully compete in school or life with members of the white majority.

Finally, racial segregation creates a class of minority school districts. We all know them. For these students in minority districts, to be there means that the vast

majority of white taxpayers, voters, and parents have no economic or personal stake in the quality of education that black and Hispanic children receive. New Jersey now has a system of public education that is both **separate** and unequal. So long as it remains separate, and the white majority feels no stake in its quality, it will remain unequal.

As Senator Cardinale pointed out, this is, as proposed, a direct response to the Englewood school desegregation litigation. This litigation seeks to reaffirm the duty of the Commissioner to develop effective remedies for racial segregation. This constitutional amendment seeks to bar the State from doing what is necessary to remedy racial segregation. And I think this is important to understand, that if this is adopted, it will freeze into place for the future, New Jersey's existing pattern of racially segregated schools.

Let me point out one other consequence which you may not have thought of; and that is, that under the Federal Constitution, the Federal courts can only impose interdistrict remedies for racial segregation when the state itself has acted to create or preserve that segregation. In each of the cases in which the Federal courts have ordered interdistrict remedies -- Wilmington, Delaware; Indianapolis, and St. Louis -- the key fact was that the state had itself acted to shape school district boundaries to create or preserve racially segregated school districts.

SCR-23, which was proposed in response to the Englewood case, freezes into place existing school district boundaries and patterns of racial segregation. It provides that these boundaries can only be altered with the consent of the white school districts. SCR-23 would alter what in the past has arguably been merely de facto segregation into State mandated de jure segregation. It thus may lay the legal foundation for litigants to institute action in the Federal courts to impose interdistrict desegregation remedies. A vote



for SCR-23 may unwittingly be a vote to throw public education in New Jersey into the hands of the Federal courts.

Public education is one of the most important, perhaps the most important, function performed by our government. It's the means through which we prepare the next generation to fulfill their roles as citizens, as participants in the labor market, and as contributors to society. It is also the means by which we transmit not only knowledge and skills, but the values upon which our nation is based. If New Jersey is to meet the challenges of the next century, we must assure all children equal educational opportunity, and equip all children to live and work together cooperatively and in harmony, regardless of race or ethnicity. We are far from reaching that goal now. SCR-23 takes us even further away. The Public Advocate strongly urges that the Senate reject this proposal.

I thank you.

SENATOR CIESLA: Thank you very much, David. Senator LaRossa?

SENATOR LaROSSA: David, just one question. I haven't heard anybody address this. In the statement in the amendment where it says, "any branch thereof, including the judiciary," realizing that it's kind of hard to ask you for a legal opinion, but just in a nonlegal sense, what is your opinion in terms of that statement relative to separation of powers? In other words, a constitutional amendment that prohibits the judiciary from imposing a remedy, should a remedy be necessary--

MR. SCIARRA: I think that--

SENATOR LaROSSA: Can you exclude, constitutionally, a branch of government being involved in government? I don't know if that's a legitimate question or not?

MR. SCIARRA: I think the answer to your question is that it could. That if the Legislature, that if this passes and becomes part of the Constitution, it would have the effect of its intent. I take it your question is whether or not the

voters themselves could approve a constitutional amendment which would remove the judiciary from an area of constitutional law? Is that your question?

SENATOR LaROSSA: I guess. If the voters vote, you know. Let's assume this gets to a ballot; this then gets passed. This is kind of a bizarre question: Can the judiciary declare something that excludes them as unconstitutional, even though it's a constitutional amendment?

MR. SCIARRA: No.

SENATOR LaROSSA: So in other words, in essence what we are saying is that we're potentially passing something, or we could be passing something that will take one of the supposedly equal branches of government out of any part of the process should a remedy be necessary, as a coequal branch of government?

MR. SCIARRA: That's absolutely right.

SENATOR LaROSSA: Okay.

MR. SCIARRA: Just let me add to that though, what it would not do, and that's the point I was making at the end. It would not remove either the State or Federal courts from jurisdiction over Federal claims. Federal law would not be affected by this constitutional amendment. It couldn't.

SENATOR LaROSSA: Right.

MR. SCIARRA: And I don't think that this amendment could strip the State courts from hearing claims or imposing remedies based on Federal law. It clearly would not restrict Federal courts. The courts would still be open as a matter of Federal law. But I think you're absolutely right in what you're doing here is: You're removing the courts from this entire area of constitutional law.

SENATOR LaROSSA: I just wanted an opinion. Thank you.

SENATOR CIESLA: Thank you, Senator.

MR. SCIARRA: Thank you very much.

SENATOR CIESLA: Thank you very much.

Our next witness will be Jennifer Hochschild, from the Woodrow Wilson School. Is Jennifer here?

JENNIFER L. HOCHSCHILD: Mr. Chair, members of the Committee, staff: I come to you today not as a concerned parent or taxpayer, although I am both in New Jersey, nor as an expert on New Jersey schools, which I'm not, but rather as a scholar of education. I have been studying and writing about the politics of education and educational policy for over a decade with a predominant but not exclusive focus on the connections between race, class and good schooling. I've written a book on school desegregation, and I have been involved in a variety of other works on the subject of school desegregation, educational policy, school choice, and so on.

My main message to you today is simple, but I also think it's powerful; which is to say that, all of the research that I know of finds that school desegregation is actually best accomplished through metropolitan, or as in New Jersey is called, regionalized consolidated school districts. Some of the problems that occur in relatively small districts or in desegregating part of a school district that Senator Cardinale and lots of other people refer to, are actually solved by increasing the magnitude and increasing the scope so that things that are problematic in small districts become solved in large districts, especially in districts that are large enough to encompass several previously separate school districts, as in New Jersey.

I'm not proposing here that school desegregation as necessarily everybody's highest priority ought always to be, nor am I saying that school districts ought always to be consolidated or regionalized in order to desegregate them. I think circumstances will vary, and in particular circumstances, it makes sense to desegregate above all else, or not to regionalize.

Nevertheless, if one's goal is to desegregate schools, one of the best ways of doing so is through regionalization of metropolitan districts. Black and white, wealthy and poor, advanced and slow students can all benefit if the regionalization process is handled well, which is certainly a big if, there need be very few losses on the part of anybody. It is, in fact, a potentially a win/win situation in the jargon of economics.

Let me take a little bit of time to explain, briefly, what I mean by that. Both the logic and the research findings would suggest that larger remedies solve problems that smaller remedies don't. We all know that there are logistical problems, and there are political problems in consolidating school districts and in adding desegregation to the problems of consolidation. But the arguments for regionalization, I think, especially in the context of desegregation, are even more powerful.

The first and most straightforward one is Judge Roth's question during the school desegregation trial for the City of Detroit. He asked, "How do you desegregate a black city, or a black school system?" He then ordered the metropolitan district, which then was, in fact, overturned by the Supreme Court much later. But nevertheless, the arithmetic remains. If you've got a school district that's predominantly black or predominantly Latino, and you're serious about desegregating schools, you simply cannot do it in that district alone. Simple arithmetic draws that conclusion. There is no political complexity there.

And, in fact, if you look at the data they confirm that common sense. Across large school districts having a countywide system leads to much greater desegregation in predominantly southern districts than district only or partial district plans. Racial isolation is reduced more in metropolitan or in countywide plans than essentially suburb only.

Well, what happens in these desegregated schools in the metropolitan regionalized districts? The first question is that of student achievement. Lots and lots of research evidence shows that low status children achieve more when mixed with high status children, and virtually all the reputable research evidence shows that high status children do not achieve less when mixed with low status children in proportions that they're not swamped; which is to say, very small proportions.

Therefore, again, the arithmetic suggests that if you mingle inner-city schools, predominantly lower achieving students -- in part because of the complexity of the schools in those cities -- if you mix lower achieving students predominantly black and Latino, although not exclusively, with higher achieving students, then everybody does better. The higher achieving students are not harmed; the lower achieving students do better. Transporting for minorities to the better facilities and stronger staffs of suburban schools enhance their learning, in general, without harming the learning of the suburban student.

In the very unlikely event that white suburban students are transferred into city schools -- which almost never happens in school desegregation cases -- if it does happen, more resources, higher expectations, and better climate will follow quickly. It was this logic, in fact, that led a white working class community group in Baltimore simultaneously to oppose a city only desegregation plan but to support a metropolitan plan, because they realized their children, too, would benefit in the way the minority children would, by taking advantage of suburban resources, better school facilities, more, on balance, higher achieving students.

And, in fact, the research evidence again rather surprisingly follows common sense; which is to say, the strongest achievement effects in school desegregation are in the metropolitan or consolidated districts.

Let me talk for a minute about white flight, which is an issue that has not been talked about here, but is one that clearly comes up over and over when we worry about school desegregation. The short version of that story is that countywide school districts have half the white enrollment decline of city only school districts. The least white avoidance occurs in urban school districts with full metropolitan desegregation plans. Again, the research evidence I'm here talking about mostly is that of the south, because that's where most of the metropolitan desegregation plans actually are.

Even increasing busing distances doesn't lead to more white flight in countywide plans, although they do in central city only plans. Why is that? That seems kind of intuitive, but, in fact, there's fairly good evidence to explain why that is the case. The first explanation is that the larger the percent minority in the school district, the greater the white enrollment declines. So if you've got a relatively small number of whites desegregating a relatively large number of blacks and Latinos, the whites leave the system. The only way you're going to avoid that, given the arithmetic I talked about a minute ago, is with a consolidated or regional plan, in which you've got roughly equal proportions of whites and minorities, or perhaps more whites.

This issue of ratios is not, I think, a trivial one. If you get too few minorities, something like 10 or 15 percent African-Americans or Latino, they find themselves in an extremely hostile school environment, and they do quite badly. If you have too many Latinos and blacks -- by white standards, that tends to be about 25 or 30 percent -- then you get the standard conventional tipping point, at which point whites leave the system. But if you can establish a consolidated district that has somewhere between 10 and 40 percent black and Latino, that seems to satisfy enough whites so that they don't

panic and leave the district, and provide a large enough critical mass for the minority students so that they don't feel like an island in a sea of hostility.

But nevertheless, the general point, I think, is clear. More diverse regionalized districts have much more leeway to disperse blacks, whites, and Latinos in all directions, instead of a system that, in fact, has as close to optimal number of students as research evidence suggested you can get.

The second reason that regional desegregation plans have less white flight is that of the very magnitude. It's simply much harder to leave the system. It's much more costly in financial and transportation and all other sorts of ways to leave a system that is relatively large than to leave a system where you can move quite quickly or easily into another district. Once people feel committed that they've got to stay in the system, they tend to get involved trying to make it work, so that the notion that you have to make it work seems to be a central element, in fact, of having a school desegregation plan actually work. And there is a fair amount of evidence of larger school districts where that's the case; that once parents were committed to the notion that they had no choice but to make it work, in fact, they did.

A third reason, the final reason, that regional school districts see less white flight is that when schools desegregate, they enhance housing desegregation, which everybody agrees is sort of the panacea to solve the problem of race in the United States, or at least one potential one.

There's a fair amount of complicated research arguing about why that's the case, and I won't walk through it here because it's in my statement, but let me just simply provide you with the evidence itself. By the late 1970s schools that had experienced metropolitan desegregation, i.e., cross district school desegregation, were showing much more rapid

desegregation of housing than counterpart cities which had not experienced metropolitan desegregation. In short, a well done school desegregation plan can lead to housing desegregation, and in the long run, that seems to be preferable to everybody.

And again, I can give you a couple of examples right here. I can provide you more at some other point if you want it.

Public officials can reinforce these incentives. In Mecklenburg County in North Carolina, city and school authorities cooperated in locating predominantly black scattered site housing in white neighborhoods, which were then exempted from busing. Roughly the same thing happened in Jefferson County, Kentucky. The Kentucky Human Rights Commission publicized school attendance zones that blacks could move into so that those schools could become desegregated so that they would be exempted from the busing plan. It turned out that white neighborhoods began recruiting black families from the city of Louisville to move into those neighborhoods. So that, set up properly, school desegregation can actually provide an incentive for housing desegregation, which can in the long run, provide a natural form of school desegregation rather than a mandated form, presumably in everybody's interest.

Metropolitan desegregation also has further virtues that city only or relatively small plans lack. In some districts it can actually decrease busing expenses and costs, and in any case, bus use costs no more than 1 or 2 percent, usually, of the school districts, once the buses themselves are purchased. Riding a school bus is actually physically safer than walking to school, and has no harmful effects on children's achievements or their enjoyment. I'll add, parenthetically, anybody who is a parent knows that their children often enjoy the bus ride as much as they do any other part of school. So the busing is a concern to parents, but it doesn't appear to be much of a concern for children or for their achievement.



Larger regional districts can have all kinds of economies of scale. We've heard about a lot of examples here, and I think this is generally true across the country. Programs for gifted children or special needs children; to purchase the computers or other equipment; special schools, magnet schools; and so on; all kinds of things are possible in a district that's got a relatively large number of children, and relatively high resources, the way that lots of tiny districts can't provide.

Larger regional school districts can finally become even more accessible to local control. There is no need to associate a slightly larger district with more centralized or more bureaucratized, or less parental involvement. It's simply a non sequitur. It's not a logical conclusion. One of the plans, for example, from Richmond, Virginia proposed for six community districts in an overall large metropolitan district, each of which would have had more community control than the previously existing district. That plan was never put into effect, but there's no reason, either politically or logically why a centralization in a formal sense, that regionalization has to imply centralization of decision making. And, in fact, a clever school district, or a clever commissioner could build in much more parental and local control. I think that's an issue that needs to be separated out and made clear, that that's a political decision which is separate from the decision on the consolidation.

Finally and most importantly is the issue of equity. You've heard a lot, and thought about that a lot. I won't beat you over the head with it, but let me simply assure you that in the long run, that is the single most important issue. There is no justification for allowing some children to receive a worse education because they had the bad luck to be born of the wrong parents.

There is, conversely, I think, no justification for denying children of all races and classes -- and here I talk about white, well-off suburban kids, as well -- the right to interact with children different from themselves. They may not become close friends -- research evidence suggests that on balance, most of them won't -- but that's not really necessary. What they will learn how to do, and what they must learn how to do, is to deal with people that are not like themselves, because that's what they're going to have to do the rest of their lives.

We adults are not terribly good at that. We have 30, 40, or 50 years of evidence that even when we try to desegregate our society, we are not particularly good at it. But we have no right to deny our children the right, the opportunity, the privilege, really, of learning how to interact with and communicate with children who are very different from themselves, with whom they're going to have to live the rest of their lives.

I therefore urge you not to allow this constitutional amendment to be placed on the ballot. Even if it's defeated, it will stir up controversy where we need cooperation, anger where we desperately need tolerance and mutual aid. If it passes it will deny public officials, in ways that we've already heard a lot about this afternoon, a crucial means for acting in the interests of all school children. Regionalization is not a panacea. School desegregation is not a panacea. But to deny the virtues of regionalizing districts out of fear of other races and classes seems to me to be ethically wrong and substantively misguided. Many of the problems, in short, that are the problems of small districts are overcome, actually, through regionalized or metropolitan districts.

Thank you. I am open to questions.

SENATOR CIESLA: Thank you, Professor.

Senator LaRossa?

SENATOR LaROSSA: No questions.

SENATOR CIESLA: Thank you very much for your testimony. We appreciate your time.

Our next witness will be Dr. Larry Rubin, the Executive Director of the Paterson School Alumni. Doctor, thank you.

L A R R Y R U B I N, Ed.D.: Thank you very much, Mr. Chairman. I'm here as a private citizen who has been involved in aspects of educational policy issues over the past 20 years. I'm currently Executive Director of the Paterson Alumni Association, which is a foundation which makes grants to Paterson community organizations, primarily for projects which are concerned with educational, recreational, and cultural programs for youth.

I wish to state my strong objections to Senate Concurrent Resolution No. 23. Those objections are threefold. One objection is a general one, and it is, frankly, a fear of cluttering up the State's Constitution which is an instrument designed to provide long-term general guidance to the State Legislature with regulations concerning current specific concerns.

Any reading of history tells us that the passionate narrow concerns of today often become the meaningless relics of the future. If every group in the State which had such a concern succeeded in adding a constitutional amendment to give legal legitimacy to their concern, we would end up with a Constitution of monstrous proportions which would impede the work of the Legislature. In a common phrase that's very popular today: If the Constitution ain't broke, don't fix it.

A second objection deals with the specific subject of district mergers. New Jersey has the highest per pupil expenditures of any State in the nation. One reason is the duplication of costs resulting from the existence of more than 600 school districts, 26 percent with less than 500 children, and 40 percent with less than 1000 children.

New Jersey has more than twice as many school districts per square mile as any other state. Citizens and legislators concerned about reducing school costs often urge the State to consider the consolidation of small districts in order to reduce duplicated administrative and other costs, while at the same time providing a broader curriculum for the children.

I understand from a recent newspaper article that Senator Cardinale fears that regionalizing schools would diminish parent participation in school affairs. I share the Senator's desire to maximize parent involvement in their children's education. Research tells us that parent activities at the school building itself, rather than central office level, have a very positive effect on their children's achievement. But I would think that if the Senator is concerned with maximizing parent participation, that he could sponsor legislation, rather than a constitutional amendment, which would encourage and facilitate parent participation in school activities at the school building level, whether the school be part of a regionalized district, or a municipal, or a county district.

My third objection is concerned with the issue of race. I think it is self-evident that one of the motives behind this amendment, for some people at least, is to prevent the regionalization of Englewood, Englewood Cliffs, and Tenafly -- and that's been stated very frankly, today -- or other similar districts in the future, when regionalization would result in the integration of predominantly minority schools with predominantly majority schools. That motivation has nothing to do with local control. It is simply that they wish to maintain racially segregated schools; to keep black children separate from white children.

This notion would be a significant disadvantage to both the majority and the minority students of our State. To segregate our children residentially, then educationally, is to

guarantee that when they meet vocationally, it will be a meeting filled with suspicion and hostility rather than understanding and cooperation. I will guarantee a further erosion of the effectiveness of our work force. We all know that the future economic health of our nation depends upon the quality of the education of our work force, an increasing proportion of which will be minorities from segregated, inadequate schools.

In a speech before Congress on March 26th, Senator Bradley made the following comments: "By the year 2000 only 57 percent of the work force in America will be native born whites. That means that the economic future of the children of white Americans will increasingly depend on the talents of nonwhite Americans. If we allow them to fail because of our penny pinching or timidity about straight talk, America will become a second-rate power. If they succeed, America and all Americans will be enriched. As a nation we will find common ground together, and move ahead, or each of us will be diminished."

In another part of that speech: "Even though an American future depends on finding common ground, many white Americans resist relinquishing the sense of entitlement skin color has given them throughout our national history."

In summary, I'm convinced that support of this amendment will impede our legislative activities forever in order to meet the narrow, current needs of some citizens by cluttering up our State's Constitution. It will prevent the elimination of the redundant costs which help make our schools the highest spending in the nation. It will carve in concrete the inordinate segregation of our schools and the certain continuing decline in the quality of our work force, and our State's and nation's economic strength.

I strongly encourage you to vote against Senate Concurrent Resolution No. 23.

SENATOR CIESLA: Doctor, thank you very much for your testimony.

Senator LaRossa, any questions? (no response)

Our next individual is Mr. William Merritt, the Board President of Engle. Are they're still here? (no response)

Then let me introduce the Reverend Charles Rawlings, the Executive Director from the New Jersey Council of Churches, from East Orange. Reverend, welcome.

REVEREND CHARLES W. RAWLINGS: Thank you. Good afternoon.

SENATOR CIESLA: Good afternoon. It's almost evening.

REVEREND RAWLINGS: Yes, indeed. I will not repeat all that you have already heard. The Council of Churches would endorse a great many of the things that have been said here this afternoon. We are asking in our testimony why a resolution such as this would be put forth when it clearly perpetuates a status quo that is inefficient and weakens the capacity of many local school systems to provide their students with an educational engagement with real world realities?

And I want to just stop and underline that it seems to me that a very simple way of getting at the question that has been raised repeatedly in the testimony I've heard today in this room can be simplified by simply asking the question this way: Why should we have merged school districts? The answer is because in our self-isolating districts the world we see in that narrow realm is simply not the way the world is. The basic question is whether or not our broader educational strategy is intended to prepare young people to live in the world the way it really is. Therefore, we would just cite a number of examples that I think illustrate the way in which New Jersey has become a State at risk.

Number one, New Jersey now has the highest unemployment rate in the nation. This reflects a major shift of jobs, a labor transfer away from the State, and a major

challenge to this State in terms of how it is going to adjust, how it will modify its strategy to be economically viable. We have, for example, not balked as a State in making Rutgers University a regionalized educational system that draws together students and resources in a powerful educational setting where those resources are concentrated and can be used in a maximal way. Why do we balk when it is clear that our secondary and primary systems also need access to those kinds of concentrated resources? If we're going to prepare our children to live in the real world and its great diversity, we need, and the Legislature needs, to retain -- as has been pointed out here this afternoon -- the flexibility to mold and shape the system to current circumstances and to the challenges of the future.

It's been pointed out that we are one of the most segregated states in the nation. But we are also a State that's been weakened compared to other states by the very absence of major city communities that enable people to interact and benefit from each other's skills and abilities. I want to underline that. It seems to me that New Jersey is on the verge of developing what we might someday, historically and retrospectively, call a congenital weakness; the inability to intersect with the diversity of the people who are already living in the State, the danger of organizing our communities the way our school districts are presently organized in small vulcanized units that protect people from intersecting other people's lives.

Preparing this State to face the 21st century in a global education and economic marketplace requires that the State and the Legislature retain the ability to shape new forms, new combinations of people and resources, if we are to be successful on the world stage. As others have said, if SCR-23 is adopted, it would tie your hands just where and when you and the State need the ability to reshape our designs and our strategies to meet new world conditions.

Amending the Constitution in this manner would send a signal that the State intends to remain parochial while the world becomes an open universe. It misleads our people with the notion that their neighborhood is a microcosm of the whole world. Often it is far from this with our patterns of racial segregation and our self-isolating small communities.

So we join others today in urging that you protect the State's ability to reshape itself by rejecting this Resolution. Thank you.

SENATOR CIESLA: Thank you very much, Reverend. We appreciate your testimony.

Our next witness is Mr. Howard West, President of the Asbury Park/Neptune NAACP. Mr. West, welcome.

H O W A R D W E S T: Thank you. I will be brief this afternoon. I just wanted to come and to share with you the position of the Asbury Park/Neptune branch of the NAACP as it deals with this bill, SCR-23.

If I may paraphrase a statement made by Dr. Benjamin Mays, the late president of Morehouse College, and the words that he used in a statement as it deals with education today, which is going to deal with this bill here. It says: "Those of us in the race of excellence in education that start off behind must run twice as fast. If not, they will ever be behind."

It's very evident to me that what you've heard today opposing this bill will determine whether the African-American will probably always be behind. But what was more frightening to me -- the question that Mr. LaRossa asked the gentleman over here -- this bill deals with the Constitution whereby it might send a signal out that those school districts that do not want to integrate would probably not do it, and it also puts the responsibility in the hands of the voters. That frightens me.



It frightens me because I'm a product of a segregated community. Bear with me as I share with you these concerns which bother me. I'm the first of my family to ever get a 12th grade education, to ever go to college, and my family has been over here for a number of years. I'm a product of a one-room school; the teacher taught eight grades. The place where I went to high school, the county, only went to the 11th grade, therefore the African-American could not get a high school diploma unless he or she attended a college or had to board out into a community that was at least 85 miles from where they resided. That troubles me. It troubles me because we're supposed to be going forward and not going backward. And we're supposed to be inclusive.

This bill troubles me. I moved up here to New Jersey hoping that we would get into a community that would openly embrace me, embrace the family. It did not. I was hoping that this State would be the forerunner of integration. I hear it ranks number four in segregation. That troubles me. It troubles me that we put bills out here that will openly embrace racism. That bothers me.

So, therefore, I'm saying to all of us today, I do not trust the ballot. When a person goes into that booth and pulls that lever, that makes up 90 percent, you cannot tell what's going to happen over there. That bill that comes out will set back this State; it might happen. And that bothers me. And then what will happen? "I didn't do it. I didn't vote for it."

I'm very, very concerned about education. I'm very concerned about all children. All children should be able to go to school together, not in isolation. Children learn from each other. They respect each other's cultures. If we expect to have a broader and a richer community, a rich school district, it must be integrated with all ethnic groups.

Children practice what they see us do. When we do not set the tone, when we fail to give them the example that they are to follow, don't fault them for the mistakes that are out here today.

So I charge you, this Committee, to listen to these comments that are opposed to this bill, take it under consideration, and please, do not do anything that's going to set this State back further.

So, therefore, we oppose it. I appreciate the time that you permitted me to talk with you. I'm hoping that you will do the right thing for all children, all ethnic groups, because they must work and come into a school district that accepts them, embraces them, because they are the children of God. Thank you.

SENATOR CIESLA: Thank you very much, Mr. West. I don't have to ask for questions any longer. It makes it a little bit simplified, that process.

Is Mr. Alfred Blumrosen, Professor of Law, Rutgers University, here? Professor?

A L F R E D W. B L U M R O S E N, ESQ.: Thank you, Senator. My name is Al Blumrosen. I've been teaching at Rutgers Law School since 1955.

SENATOR CIESLA: I'm sorry. It's spelled wrong here. I'm sorry.

MR. BLUMROSEN: That's okay. I have 10 copies of the speech which I have which I will give to your clerk, and two other items which I would like to put in your record. And I won't read them.

SENATOR CIESLA: Bless your heart.

MR. BLUMROSEN: But it's deja vu all over again, as Yogi Berra said.

SENATOR CIESLA: That's right.

MR. BLUMROSEN: Back in the early 1960s I conducted a study of the powers of the Division on Civil Rights, the Commissioner of Education, and the Real Estate Commission to

deal with discrimination in New Jersey. I conducted that study for the New Jersey Civil Rights Commission under the chairmanship of the late Sidney Reitman. We came away from that study with the general conclusion, which the Commission adopted and which the Attorney General approved, that none of the agencies, including the Commissioner of Education, were utilizing their powers to address problems of segregation. This was in 1964.

And we addressed specifically in the study-- The "Law Review" article which grew out of the study is now part of your record, I hope. We addressed specifically the question of the power of the Commissioner to order transfers across school district lines, which is related to the problem that is before you now. We concluded that he had the power, but he declined to exercise it. He kept declining to exercise it until the Morristown case in 1970. And now this proposed resolution -- now that we may be on the edge of a decision by the courts that you have to exercise it -- this proposed resolution would move things back to where they had been before the time of the study in 1964.

I think that if the Commissioner of Education in the 1960s had exercised his powers, that we would have this matter behind us. Sure, there would still be controversy, but the basic question of whether or not we are to conceive of ourselves as a unitary State, or as 600 and however many vulcanized units, would have been settled to the benefit of everybody, particularly everybody in politics who wouldn't have to keep grappling with this problem. So it's, as I say, *deja vu* all over again.

Now, coming to the issue. It seems to me that the proponents of this bill are on the horns of a terrible dilemma, which is both a practical and a legal dilemma. The practical dilemma is that it is perceived as a racist bill. You've heard that here today, and I don't think there was anything that

Senator Cardinale said that interferes with that perception. So, it is perceived as a racist bill because it will promote segregation. That's the practical concern. And for practical politicians, to put a bill that is perceived as a racist bill before the public for a vote, put it before them sometime this summer, because that would be required, strikes me as not really sensible.

There's also a legal problem if the purpose of this bill is as it's perceived to be: to perpetuate racial segregation. It probably violates the 14th Amendment of the United States Constitution. And I think Senator Cardinale's statement will be the chief evidence that that's what it is. Now what on earth is the sense of putting something before the people that has that flaw in it? All that will mean is that for another decade you are going to have the problem lingering in the courts, and no progress.

I'm here to help the proponents out of that dilemma. The way out of that dilemma is to take the steps that have been referred to by a couple of the speakers here today, and adopt a program for integrated housing in the State. If you integrate housing this problem disappears. The school segregation problem will disappear. If people don't want to have regionalization, they won't have to have regionalization as long as they've done the integration of housing.

I want to suggest to you, and I know that it's not fully within the jurisdiction of your Committee, but it would be possible to submit it to other committees. I want to suggest to you a seven-point plan that I think this State ought to adopt to move positively and affirmatively to have integrated housing in the State as the only way to save this kind of a constitutional amendment from all of the infirmities that I've just described.

The seven points start on page 9 of the document. I want to make clear that I haven't invented these points for the

purpose of opposing this resolution. I published an article in the "Yale Journal of Law and Policy" a couple of years ago.

SENATOR CIESLA: I see all the cites here.

MR. BLUMROSEN: Okay. Where I raised the first one, and that is small unit public housing out past suburbia, past exurbia. There's a lot of beautiful vacant space in New Jersey where people can get out of the morass of the cities in which they are located with some help. So scattered site State based public housing out in exurbia is point one.

Point two: We have a first homeowners' mortgage program in the State. We should expand that and then focus the expanded part on helping people, particularly family people, get out of the ghettos and be spread -- go to places where it will appear to them that educational living opportunities will be better. We've got a lot of people living on welfare living in the central cities. Give them an opportunity to get out of the morass. It's extraordinary to me, the persistence and patience that mothers -- the much maligned single welfare mothers -- must have in order to try to raise kids in the environment of those cities. Give them an opportunity to raise their kids outside of that environment.

The next two proposals deal with improving funding for the Division on Civil Rights in two respects. Some years ago at Rutgers Law School we had a project with the New Jersey Division on Civil Rights. We beat them over the head in the '60s, and by the '70s we were friends with them. We helped to develop a rule which they adopted which requires landlords of large apartment units out in suburbia to report annually on the racial composition of their tenants, to give the Division some idea-- Just like employers have to report to the Federal government on their employees to give the government some idea of whether they're operating in a fair way or not.

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The Division has adopted that rule. The rule has been upheld by the courts, but the Division has never had the money to implement it. If they had more money to implement it, they could, perhaps, begin to enforce the antidiscrimination obligation that's been in effect for a long time.

Secondly-- Well, this is now five. The Division also needs more money in order to enforce the prohibition on discrimination in lending practices. You know, a lot of problems that people have in moving out to the suburbs are problems of borrowing. And a lot of the problems of borrowing ultimately relate to stereotypes about people who live in the city.

Six: I think the State should establish a social service unit devoted to assisting minority families with children to relocate outside of the central cities.

And finally, if that should happen, then there ought to be some kind of funding assistance to those municipalities into which people do relocate to assist those municipalities because they will have to spend more on social and educational services.

If the supporters of this resolution, No. 23, would embrace a program like that, to encourage housing integration, you would go a long way toward dissipating the inference that what they're trying to do is to preserve segregation. And I would put it-- I would hope that you would put it to them that it's unconscionable to present this Concurrent Resolution No. 23 to the voters without having, at the same time, with it in place, a program that demonstrates that the State of New Jersey, the public policy of the State of New Jersey is to encourage housing integration.

Thank you.

SENATOR CIESLA: Thank you, Professor. I'd just like to point out, I think I may hire you as a consultant. Being in the building industry, your testimony and proposal flies almost

directly in the face of the State Development and Redevelopment Plan, where they're trying to concentrate on rebuilding the inner cities and trying to preserve the outlying land.

It's interesting. But again, there are competing needs of the State of New Jersey that probably would make it difficult to implement some of the ideas which are here, although I don't disagree with them by any stretch of the imagination. It seems that not only would you have the opportunity to begin to cure some of the societal dilemmas that we have, you're also going to allow individuals to exercise choice, which has been one of the main cornerstones of this particular State for so long. But that's being turned on its head, currently, while we speak, by administrative studies which are being done in another department of this particular State. An interesting dilemma.

MR. BLUMROSEN: Thank God I didn't ever decide to run for office. But let me say one thing about that.

I didn't intend this proposal to be the exclusive way in which the State would deal with something. I think you might rebuild the cities, but at the same time, there's building industry and home building industry out there in the suburbs that wouldn't mind having some of this happen out there, too.

And I think your point is the fundamental one, choice.

SENATOR CIESLA: Absolutely.

MR. BLUMROSEN: Thank you, sir.

SENATOR CIESLA: Thank you, Professor.

Our next witness, if they're still here, Mr. Richard McOmber, school board attorney for-- I'm sorry, I don't know which school.

R I C H A R D   D.   M c O M B E R,   E S Q.: Asbury Park.

SENATOR CIESLA: Asbury Park.

MR. McOMBER: Senator, members of the Committee, I will be brief, especially in light of the hour. I have some of the same concerns about the statement for SCR-23 that have been

expressed by others. If you just read that one sentence alone-- I don't question its validity; I know it's not true. "Forced regionalization reduces educational effectiveness by minimizing the communities identification with schools, while neither saving money or advancing other important societal goals." I would presume that statement is based on something about which I know nothing.

I've represented Asbury Park for 12 or 13 years. We have seen various of the sending districts try to get out of the sending receiving relationship. We've heard all kinds of excuses, including that our principal in the high school is an administrative head, not an educational leader. But when you strip all the reasons aside, it comes down to we have a black high school and white towns want out.

Now this body -- this Senate -- the Assembly, the Governor, and the courts have addressed that issue, and not eons ago. They addressed it as late as '86. And what this body said, in concurrence with the Assembly, with the approval of the Governor, and what the Commissioner has been operating under since '86 is that sending receiving relationships may be broken. In fact, the presumption now is that if a sending district wants to get out of a sending receiving relationship, it may, subject to certain constraints -- and the constraints are not ones that I'm making up, but ones that the Senate approved in '86. "The Commissioner shall make equitable determinations based on consideration of all the circumstances, including the educational and financial implications for the affected districts, the impact on the quality of education received by the pupils, and the effect on the racial composition of the pupil population of the districts." If any of those negative criteria are there, the Commissioner generally has not granted the requested relief of a sending district pulling out.



To adopt SCR-23 will fly in the face of that which you have already done. It will fly in the face of the statutory framework in New Jersey affecting sending receiving relationships. And I think the standard in 18A:38-13 is a much better standard. If we want to have a breakup of a sending relationship, fine, but the critical thing to look at is not only the education of the kids, not only the financial impacts on the receiving district, but the racial isolation, the racial composition. I suggest to you that SCR-23 flies in the face of that and is wrong.

During 43 days of hearing on the last case, when somebody tried to get out, which is now before the State Board, we took some of the history classes from the Asbury Park High School to sit in on the administrative law judge's hearings. And the kids said during the recesses, "Why don't the white kids want to come here?" And that goes to some of the feelings that the head of the NAACP spoke of. "Why don't the white kids want to come here? What's wrong with us?"

The only response was, "Look, this isn't the white kids. This is the parents. This is the school boards. But don't worry, you have a protector. You have courts and you have a Legislature. They will protect you. And that's why we're going through these hearings, constitutional due process. Don't go out in the streets and start doing things. We have a process we can go through."

What you're being asked to do is to terminate that process, totally and absolutely thwart it, and just give up all right to legislate, to mandate by court, and to mandate through the executive branch through the Commissioner of Education. In so doing, I think you're inviting Federal intervention. I am not a constitutional expert, but I will tell you the next place we will end up, or boards like us, will be in the Federal District Courts. I can see Federal judges becoming the

Commissioner in various districts. We don't want that in New Jersey, but you're opening the door for it, and God forbid you're wrong.

God forbid this thing passes. How are you going to take it back when you recognize that you made a mistake? It will be virtually impossible, because then you'll have to convince the electorate to again amend the Constitution.

So I would urge you, as one who has been involved in it a little bit, as one who has spoken to the kids, don't give up these rights that you have. Don't give up these rights that the Constitution has granted to you, the Legislature. It's wrong, and once you do it you won't get them back easily, and it will cause all kinds of problems for-- Professor Blumrosen said 10 years, or others said 10 years, probably a lot longer than that.

Thank you.

SENATOR CIESLA: Thank you very much, Mr. McOmber.

Is there anyone here, members of the Englewood Board, or have they all left?

UNIDENTIFIED MEMBER OF AUDIENCE: They had to leave, ironically, to go to a meeting with the Englewood Cliffs Board.

SENATOR CIESLA: Then I believe that concludes all the scheduled testimony. Is there anyone who wishes to briefly testify who is not scheduled? (no response) Seeing none, I will adjourn this meeting. Thank you all for coming.

(HEARING CONCLUDED)



## APPENDIX



STATEMENT OF PROFESSOR PAUL TRACTENBERG ON SCR 23

My name is Paul Tractenberg. I have been a professor at Rutgers Law School since 1970. During that time, my primary professional and scholarly focus has been education law. I also have been heavily involved in litigation about, and in the legislative and administrative aspects of, many of the leading educational policy issues of the past several decades.

Currently, I am assisting the Education Law Center, an organization I founded in 1973 and directed for its first three years, with its legal briefs in Abbott v. Burke. I am also co-counsel to the Englewood Board of Education in its litigation with Englewood Cliffs and Tenafly.

I have agreed to participate in those cases because, clearly, both involve major statewide issues of constitutional law and of educational policy. These issues interrelate in important ways; together their resolution will have much to say about the future of public education in New Jersey. Indeed, they will have much to say about the future of race relations, governmental operations and the economy of our State.

Against that backdrop, I am here to testify as strongly as I can against the adoption of SCR 23. Before I reach the major

grounds of my substantive opposition, I want to make a procedural point. Republican legislators were very critical of their Democratic colleagues less than two years ago for the unseemly haste with which the Quality Education Act was approved and enacted into law. I and many others, of different political persuasions, joined in that criticism. Major proposed legislative action deserves full public consideration and input. In turn, that requires ample public notice and an adequate opportunity for the public to be heard.

Ironically, therefore, I am here to complain about lack of notice of this very hearing on SCR 23. What is proposed by that bill is an amendment of the State's Constitution, an amendment with far-reaching implications. This is an action more serious by far than any other kind of bill which the Legislature might adopt, because statutes can always be modified by future legislative action alone. A constitutional amendment, on the other hand, by the nature of the amendatory process can be undone only through a more elaborate process.

In fact, the public hearing we are engaged in, because SCR 23 proposes a constitutional amendment, is expressly required by the State Constitution (Art. IX, par. 1).

Yet, despite SCR 23's importance and special character, the notice of this hearing was issued May 28 and was not received in the mail by many recipients until less than a week prior to today. Many other interested individuals and organizations never received any direct notice of the hearing. Additionally, the only opportunity thus far offered for public input is this one afternoon in Trenton, during the regular work week for many who would have wished to present their views to the Committee. I personally have been in contact with many distinguished New Jerseyans, who wanted to be here today but who were unable to do so because of the shortness of the notice, or because of long prior commitments. I urge the Committee to afford these and other members of the public a further opportunity to express their views on SCR 23.

I believe that it is crucial for the Committee and the Legislature to be as fully informed as possible before you act'on

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SCR 23. You must be aware of what SCR 23 would do, and you must be aware of what primarily motivates it, or at least how it will be perceived by the public.

I believe that SCR 23 is more about race than it is about education. It purports to bar the State government, or any branch of it including the judiciary, from requiring any school district to join a new or existing regional or consolidated school district.

There has been only one required regionalization in New Jersey--the Morris School District, formed as a result of the New Jersey Supreme Court's 1971 decision in the Jenkins case. The Court's decision was based upon New Jersey's strong constitutional commitment to racial balance in the public schools, drawn from the Constitution's education clause, and from its equal protection and anti-discrimination provisions. The Morris School District continues to the present time as an educationally successful, racially balanced and racially stable district. Had there been more notice of this hearing, I believe that the Superintendent of that district would have been here to testify against SCR 23, based on his unique perspective.



Regionalization efforts were made subsequent to Jenkins by the New Brunswick and the Plainfield districts. Neither succeeded before the Commissioner or State Board, or were pursued in the courts. The consequences are there for all to see--two districts with pupil populations, especially at the high school level, which are virtually all minority; districts working hard, but with great frustration, to provide their students with the best possible education.

Another case seeking regionalization to vindicate the constitutional mandates, that involving Englewood, Englewood Cliffs and Tenafly, is awaiting decision in the Appellate Division of the state courts. Several other cases, also based upon New Jersey's constitutional commitment to racial balance in the schools, are working their way through the administrative process.

These cases seek to make real what has long been New Jersey's strongly stated constitutional commitment and ideal--that being educated in a racially balanced setting, wherever that

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is feasible, is essential for the education of all children. Ultimately, it is essential for our society, if we want it to succeed as a vibrant, unitary, multiracial and multicultural society.

Regrettably, New Jersey has been very bad at translating constitutional pronouncements into educational and social reality. The fact that New Jersey's public schools are the fourth most segregated in the country is a tragic commentary. This means that a huge proportion of the State's minority children are being educated, or in many cases miseducated, in segregated school districts.

The ultimate answer to this huge problem may be residential desegregation. In the meantime, though, the State's education authorities, and the courts, should not be stripped of their authority to rectify the problem in particular circumstances where district consolidation is both necessary to achieve racial balance and is educationally and logistically feasible.

Yet, despite that important need, my strong suspicion is that the Englewood case has provided the main impetus for SCR 23.

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This brief history suggests strongly that SCR 23 is primarily directed at preventing the state courts, or perhaps the Commissioner or State Board, from ordering regionalization when that is an appropriate, perhaps the only, remedy for unconstitutional racial imbalance in the public schools.

But understand--the amendment proposed by SCR 23 also would prevent the Legislature from reorganizing the State's public education system, to achieve racial balance or for any other reason. In the face of a strong recommendation from the Quality Education Commission that school district reorganization be considered for reasons of efficiency and cost-saving, SCR 23 would write into our State Constitution the existing 611 school districts, whether they be non-operating, or too small or too large to mount an effective educational program. At a time when flexibility and creativity are called for to meet the challenges of federal and state educational initiatives, SCR 23 would opt for rigidity.

For all these reasons, SCR 23 is absolutely the wrong approach at the wrong time. It should be soundly rejected by

this Committee and by the Legislature. More than ever, what is needed from you is farsighted, courageous leadership inspiring in your constituents their best qualities, rather than conduct which would pander to your constituents' basest instincts and fears.

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## Position Statement

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### SCR-23

The topic of merging some of New Jersey's many small school districts into large regional districts has long been a subject of discussion in New Jersey.

In 1969, the widely studied Mancuso report, named for former State Board of Education president Ruth Mancuso, recommended among other things that all New Jersey school districts be merged into K-12 regionals with no fewer than 3,500 students.

While attitudes have changed somewhat since then, the issue periodically reemerges. New Jersey has 618 school districts, of which 589 actually operate their own programs. The remainder send their students to other districts on a tuition basis. Commentators have observed that New Jersey has more school districts than some larger states. Much of this structure derives from the fact that even though New Jersey is a small state, it contains 567 separate and distinct municipalities, some of them covering a square mile or less.

This situation has led to the existence of many small elementary school districts which either send their students to a larger district on a tuition basis or become involved in a "layering process." As many as three different school districts may deal with the children from a particular community through the existence of an elementary district, a limited purpose regional middle school district and a limited purpose regional high school district.

Many state officials have long considered this situation to be inefficient and to account at least in part for the high per child cost of education in New Jersey. New Jersey's expenditure per pupil is now the highest in the United States. While New Jersey's expenditures per pupil seem perfectly logical in light of the fact that New Jersey's per capita personal income has been second or third in the nation for years, state officials still feel the existence of many small school districts to be inefficient.

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Periodic proposals to force regionalization have been greeted with public opposition. Discussion in recent years has therefore tended to center around creating incentives for municipalities to voluntarily merge their school districts.

The available research is limited and tends to deal more with the size of individual schools than with the size of school districts. However, there seems to be some assumption that the size of schools and the size of districts are linked because larger school districts tend to have larger schools.

The research that is available tends to suggest that large school districts are not demonstrably more effective in either educating pupils or in minimizing costs.

The research also tends to suggest that smaller school districts may have much to offer in terms of student involvement and satisfaction. Some authors even go so far as to characterize the school district consolidation movement of the 60's and 70's as a mistake.

The issues discussed above would be best addressed by treating regionalization as a local, voluntary process free of restricting state mandates which could be misinterpreted to the detriment of all concerned. Part of this local process must involve mandatory consultation with employees of involved districts through their collective bargaining representatives.

The issue of size of the reorganized regional district should be left to the local decision making process and should not be restricted by state mandates. This position is supported by the absence of strong research support for any particular district size or scale of operation model.

Therefore, NJEA agrees with the principle behind SCR-23. However, we have two concerns.

First, we are unsure what the "penalty" in the third part of the proposed ballot question would be. Does this mean that a district would not lose state aid if it declined to be regionalized with other districts? Does it mean that the district's state aid would remain the same? Does it mean that the district will not be fined? Exactly what penalties are to be prohibited?

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Second, the question of racial imbalance must be part of this discussion. We live at a time when, as a nation, we are arriving at some unpleasant and dangerous conclusions about ourselves. We see that our efforts to build a society in which people of all races, creeds and colors are treated equally and fairly have not been successful. We still hold out the hope that our public institutions, including our schools, can play a critical role in educating our children about the dangers of racism, discrimination, and separatism in our country.

We must question the portion of the proposed amendment that would have the legislative branch of government forbidding the judicial branch to act in a sphere which, at its core, involves questions of social justice. Certainly, federal courts will not be bound by the state constitution, so federal remedies would still be available to plaintiffs who felt they were the subjects of discriminatory racial practices in education.

Whether state courts would rule that this prohibition would be constitutional would be another vexing question. If history is any guide, we could be sure that challenges would be forthcoming. It is crucial that we ask ourselves whether, at this time in our history, we want to risk further divisions by trying to forbid our judiciary to remedy the effects of racial discrimination. We think not; we urge that this portion of the proposed amendment be dropped.

DTC/RB/jw  
6/8/92

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Testimony before the New Jersey State Legislature  
Senate Education Committee

on SCR-23 (1R) -- Proposed constitutional amendment to prohibit  
the State from mandating school district regionalization

Jennifer L. Hochschild

Professor, Woodrow Wilson School of Public  
and International Affairs,  
Princeton University

Visitor, 1991-92, Institute for Advanced Study

June 8, 1992

I come before you today, not as a concerned parent or taxpayer (although I am both) nor as an expert on New Jersey schools, but as a scholar of education. I have been studying and writing about the politics of education and education policies for over a decade, with a predominant but not exclusive focus on the connections among race, class, and good schooling.

My main message to you today is as simple as it is powerful: almost all research on the subject finds that school desegregation is best accomplished through metropolitan, or regionalized, school districts. This is not to say that school desegregation should always be educators' and parents' highest priority; it is also not to say that school districts should always be regionalized in order to desegregate them. Circumstances and needs vary. Decisions about how to solve the problems of racial and class inequity in schooling, and decisions about the virtues and defects of regionalizing school districts, need to be made on a case-by-case basis depending on the circumstances and needs of individual districts and their students. Nevertheless, if one's goal is to desegregate schools, one of the best ways of doing so is through regionalization. Black and white, wealthy and poor, advanced and slow students all can benefit. And if the regionalization process is handled well, there need be very few losses on the part of anyone.

Let me take a little of your time to explain the logic and research findings that lie behind this conclusion.

The logistical problems of regionalizing several school districts, each of which has idiosyncracies and standard operating procedures, are not trivial. Neither are the political problems -- witness our presence here and this proposed amendment. Desegregation adds its own logistical and political complexities, since it presumably involves reassignment of students and teachers and renovation of curricula and school programs.

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But the arguments for regionalization, especially in the context of desegregation, are even more powerful. First and foremost is Judge Roth's question during Detroit's school desegregation trial: "How do you desegregate a black city, or a black school system?" Detroit's 90+ percent black enrollment is not unique; by 1990, many school districts both within and outside of New Jersey had predominantly black and Latino students. In many cases, therefore, simple arithmetic requires that several school districts be combined if we wish to end racial isolation.

The data for once confirm common sense. Across fifty large school districts, having a countywide system (that includes heavily minority cities and white suburbs) does more to influence the amount of desegregation in elementary schools than any other variable, and it is an important predictor for change in secondary schools. Racial isolation is reduced more in metropolitan or countywide plans than in central city or suburb-only plans.

What happens in these desegregated schools? Consider first, student achievement: if low-status children achieve more when mixed with high-status children (and the latter do not achieve less, as virtually every reputable study of white student achievement in desegregated schools shows), then mingling inner-city and suburban students should, in general, improve the performance of the former without harming the latter. Transporting poor minorities out to the better facilities and stronger staffs of suburban schools should enhance their learning. And in the unlikely event that white suburban teachers and students are transported into city schools, more resources, higher expectations, and a better climate will follow quickly. It was this logic that led a white working-class community group in Baltimore simultaneously to oppose a city-only desegregation plan and to endorse a metropolitan approach. Their children too would benefit from access to the suburbs.

Desegregation plans that result from consolidating several districts do, in fact, "show the strongest [achievement] effect of [any type of] desegregation." Furthermore, black achievement increases the most in schools with 15 to 30 percent black enrollment, a racial ratio that most cities can no longer produce by themselves but that is not uncommon when several districts are consolidated.

Next, consider white flight and residential and enrollment stability. "Countywide school districts have half the white enrollment decline of city[-only] school districts." The least avoidance occurs in "urban school districts with full metropolitan desegregation plans, plans which put all children in predominantly white schools and leave no readily accessible all-white districts to which to flee." Even increased busing distances do not lead to more white flight in countywide plans, although they do in central-city-only plans.

There are several reasons why regionalized desegregation plans

dampen the white flight that single-district-only plans call forth. First, "the larger the percent minority in the school district the greater the white enrollment decline," but regionalized districts can disperse minority (and poor) students among white and high-status students.

The issue of ratios of white to non-white students is not a simple one. On the one hand, a school with fewer than 15% minority students is apparently such a hostile environment that blacks suffer academically and psychologically. The same results could hold, of course, for a small proportion of whites in an overwhelmingly black school -- a likely occurrence in a city-only plan, but not usually a problem in a regionalized district. On the other hand, some researchers find that after a district's or school's minority enrollment reaches about 30 percent, white flight increases exponentially (although the effect is less in countywide than in city-only districts).

But regardless of the precise dynamics of "tipping points," turf protection, and isolation, one general point is clear: larger, more diverse regionalized districts have much more leeway to disperse blacks and whites enough but not too much than do city-only or partial plans. At the very least, regional desegregation plans can keep the concentration of blacks low enough to defuse white resistance and flight.

A second reason that regional desegregation plans have less white flight than single-district plans lies in their very magnitude. A partial or temporary change cannot nudge reluctant participants into commitment. But consolidating several school districts into one is such a massive undertaking that it is bound to seem permanent and may induce parents to dig in and try to make it work for their children. More mundanely, the costs of moving far from job and friends increase as the school district reaches further. At some point, leaving becomes so difficult that people stick with the new system and commit themselves to making it work.

A final reason that regional school districts may see little white flight when their schools desegregate is that they enhance housing integration -- surely the best way to desegregate schools. "The racial composition of a school and its staff tends to stamp that identity on the surrounding neighborhood." And even in neighborhoods that are temporarily integrated because they are transitional, a significant number of whites continue to move in until the faster immigration of blacks halts the flow of whites. These two facts -- that schools stamp neighborhoods, and that whites will move into an integrated neighborhood as long as it is not "too" black -- suggest that a school that maintains a constantly high percent of whites may encourage whites to stay in or move into a neighborhood with a substantial portion of blacks or Latinos. Such stable, predominantly white schools are much more feasible in regional districts than in single-district-only plans.

The direct evidence on ties between school and housing desegregation is clear, and follows the logic just described. "By the late 1970's, the cities that had experienced metropolitan school desegregation were showing much more rapid desegregation of housing than their counterpart cities that had not experienced metropolitan school desegregation." In Riverside, California, for example, fifteen years of housing desegregation reduced from twenty-one to four the number of elementary schools requiring busing in order to be balanced. Where schools are segregated, both newspaper advertisements and real estate agents steer clients accordingly, and buyers respond; where all area schools are desegregated, there is less racial steering. Buyers then use other criteria such as proximity to work or public transportation to locate new homes, and these criteria probably have a less segregative impact than schooling would.

Thus evidence, as well as common sense, imply that school districts should exempt students in integrated neighborhoods from transfer to a nonlocal school. Regional school districts, unlike many existing small school districts, are large enough to encourage this sort of flexibility and variation at the neighborhood level without disrupting the whole plan. If integrated neighborhoods can keep local schools, a powerful incentive system is established. "By...encouraging housing integration, the white families in such neighborhoods...reacquire [a] neighborhood school. For blacks,...a move out of the ghetto...both exempts minority children from busing, and by contributing to racial balance in their new neighborhood (which will eventually exempt the white children living there) makes them welcome there."

Public officials can, if they choose, reinforce these incentives. In Mecklenburg County, North Carolina, city and school authorities cooperated in locating scattered site public housing (predominantly for blacks) in white neighborhoods which were then exempted from busing. In Jefferson County, the Kentucky Human Rights Commission publicized school attendance zones that blacks could move into to avoid busing, and white neighborhoods began recruiting black families. City and county housing authorities also used rent subsidy programs to encourage residential desegregation. Enough blacks moved from the city of Louisville to the suburbs between 1975 and 1981 that the number of children bused declined by 40 percent, their average time on buses was halved, and the number of schools exempted from transportation because of neighborhood desegregation increased from twenty-eight to thirty-two.

Metropolitan desegregation has further virtues that city-only plans lack. In some newly regionalized districts, it has actually lowered busing distances and costs and/or made bus use more efficient. In any case, busing typically costs no more than 1-2% of a school district's budget, once the buses are purchased (almost always with state aid). Riding a school bus is physically safer than walking to school, and has no harmful effects on children's achievement or enjoyment of school.

In addition, a larger regional district can increase educational options by creating economies of scale that permit programs for gifted or special needs children, the purchase of computers and other equipment, schools of science or art, and so on. Suburban districts can avoid closing schools and losing federal and state revenues because of declining enrollments.

Larger regional school districts could even become more accessible to local control; the metropolitan plan approved by the federal district court for the Richmond, Virginia, area (in a decision later overturned) called for six community districts, each smaller than the smallest of the three existing districts they would have replaced. These districts would have hired faculty and staff and made budgetary and curriculum decisions on their own. There is no reason that regionalizing several school districts has to imply centralization of important school decision-making.

Finally and perhaps most importantly, is the issue of equity. There can be no justification for allowing some children to receive an excellent education and others a poor one, just because the latter made the mistake of being born to parents with little money or dark skin. There is no justification for denying children of all classes and races the right to interact with children different from themselves. They may not become close friends, but they will learn to deal with people like those they will have to deal with during the rest of their lives. Just because we adults are not as good as we should be at working with and communicating with people of different backgrounds does not mean that we have the right to deprive our children of a skill that is as essential as it is desirable.

I therefore urge the New Jersey Senate and Assembly to not allow this constitutional amendment to be placed on the ballot. Even if it is defeated, it will stir up controversy where there must be cooperation, and anger where we need tolerance. If it passes, it will deny public officials a crucial means of acting in the interests of all school children. Regionalization is no panacea; neither is school desegregation. But to deny the many possible virtues of regionalizing school districts out of fear that races and classes will thereby come into more contact with one another is ethically wrong and substantively misguided.

Thank you for your attention. Please contact me (609-258-5634) if you would like references to the findings described above, or consult my book, The New American Dilemma: Liberal Democracy and School Desegregation (Yale University Press, 1984).

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**TESTIMONY ON SCR NO. 23  
BY THE  
REV. CHARLES W. RAWLINGS, EXECUTIVE DIRECTOR  
NEW JERSEY COUNCIL OF CHURCHES**

**June 8, 1992**

Good afternoon. I am the Rev. Charles W. Rawlings, Executive Director of the New Jersey Council of Churches.

I come before you this afternoon deeply concerned about the proposed amendment to the Constitution that would prevent any branch of state government, including the Judiciary, from forcing a local school district to regionalize or consolidate with one or more other school districts. I note with surprise the statement in the resolution that claims that merger of school districts would neither save money nor advance other important societal goals.

This committee is as aware as anyone of the really implausible number of school districts in this state—590—that includes districts of under a thousand students complete with expensive superintendent, staff, bureaucracy and duplication of facilities on a vast and wasteful basis.

At a time of dominance for the conservative view, we must ask why a resolution such as this would be put forth when it clearly perpetuates a status quo that is inefficient and weakens the capacity of many local schools systems to provide their students with an educational engagement with real world realities. One need not favor heavy-handed social engineering to perceive that these nearly 600 school districts themselves represent a form of social engineering that increases operating overheads while preventing contact with the diversity often represented in surrounding communities.

SCR 23, if adopted, would tie the hands of the state regarding some of its most fundamental needs. Let me be specific.

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1. New Jersey, with the highest unemployment rate in the nation, needs a strategy that unites its resources and its people in ways that enable them and the state as a whole to develop a more coherent strategy for educational and economic development.

2. For example, we have not balked, as a state, in making Rutgers University a regionalized educational system that draws together students and resources in a powerful educational setting where resources can be concentrated and used in a maximizing way. Why do we balk when it is clear that our secondary and primary systems also need this access to resources?

3. New Jersey is one of the most segregated states in the nation. It also is a state that has been weakened, compared to other states, by the very absence of major city communities that enable people to interact and benefit from each others skills and abilities.

4. Preparing this state to face the 21st century in a global education and economic marketplace requires the ability to shape new forms, new combinations of people and resources if we are to be successful on the world stage. SCR 23, if adopted, would tie our hands just where and when we need the ability to re-shape to meet new world conditions.

Amending the constitution with SCR 23 sends a signal that the state intends to remain parochial while the world become an open universe. It misleads our people with the notion that their neighborhood is a microcosm of the whole world. Often it is far from this with our patterns of racial segregation and our self-isolating small communities.

We urge the rejection of CSR 23 and the protection of this state's ability to re-shape itself to meet the requirements of the next century.



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ALFRED W. BLUMROSEN  
Thomas A. Cowan Professor of Law

TESTIMONY OF  
ALFRED W. BLUMROSEN  
CONCERNING SENATE CONCURRENT RESOLUTION No. 23

June 6, 1992

My name is Alfred W. Blumrosen. I am the Thomas A. Cowan Professor of Law at Rutgers Law School in Newark. I have taught at the law school since 1955. I appreciate the opportunity to appear before you in connection with Senate Concurrent Resolution No. 23. This resolution proposes that the people of New Jersey amend our constitution to prohibit the state from requiring regional or consolidated school districts. The amendment appears to be a response to proposed action by the State in a case arising in the Englewood-Tenafly area involving racial discrimination and segregation issues.

My involvement with the problems arising out of de facto school segregation dates back to 1963. In that year I was asked by the then Chairman of the New Jersey Civil Rights Commission, the late Sidney Reitman, to conduct a study of the operations of the New Jersey Civil Rights Division, the Department of Education, and the Real Estate Commission. The study was conducted by

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myself, sociologist Leonard Zeitz, and the Rutgers Law School class in Social Legislation. The report of the study was approved by the Commission and made public in December, 1964. The study concluded:

In the north...[h]ousing is largely segregated. The 'neighborhood school policy' will, therefore, produce segregated schools with no more governmental effort than the assignment of pupils to the schools closest to their homes. This is called 'de facto' segregation, presumably to indicate that it arises from the housing pattern rather than from the deliberate efforts of the authorities. But the distinction is without substance. The school officials know that their policy will produce segregated schools. This knowledge makes innocence impossible. These segregation which results from the 'neighborhood school policy' is, therefore, as fully 'intended' as that which results from the school board decisions in the deep south.

...Once the fruit of knowledge is eaten innocence is at an end, and all that happens thereafter is viewed as the deliberate choice of government.<sup>1</sup>

The study, which was approved by the Commission and the Attorney General, was critical of the operations of both the Commissioner of Education and the Division on Civil Rights, as well as the Real Estate Commission. It concluded:

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1. The study was converted into a law review article, Alfred W. Blumrosen, Anti Discrimination Laws in Action In New Jersey: A Law-Sociology Study, 19 Rutgers L. Rev. 189 (1965). The quotation is from the article, at 255. A part of the study involved sociological examination of the attitudes of Blacks in Newark. This was published as Leonard Zeitz, Survey of Negro Attitudes Toward Law, 19 Rutgers L. Rev. 288 (1965). Of course, the study could not address legal developments which took place after it was concluded.



What we have found, stripped of qualifications, is that during the period studied, none of the agencies utilized their powers to the full to attack discrimination. They tended to wait for a complainant, and then to construe their statutory powers narrowly. They have not enforced the law to its full extent, either procedurally or substantively. This is not a criticism of individual administrators....This is a statement of fact about the governmental process in dealing with discrimination.<sup>2</sup>

The study specifically criticized the Commissioner of Education for failing to utilize his powers to address de facto school segregation across municipal boundary lines.<sup>3</sup> It cited several New Jersey Supreme Court decisions as of that time, which were critical of the Commissioner's excess of caution in exercising his supervisory powers. If the Commissioner had followed the advice of the Civil Rights Commission in 1964, we might not now be faced with the enormous difficulties which exist in educating the youth of the state, particularly those living in the central cities. The problems of integrating education would have been addressed. Now, because of inaction 30 years ago, we are faced with more serious problems. Just as the Commissioner now seems willing to face his existing statutory responsibilities, this proposed amendment would revert back to the conditions which the

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2. Id at 213.

3. Id at 254-270.

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Civil Rights Commission criticized in 1964. It is, as they say, "deja vu all over again."

After I completed the study--and I will submit for your record a copy of the law review article which was based on the study--I went on to concentrate my own energies in the area of equal employment opportunity law. During the time of the study, I became adviser to Rutgers University in connection with racial discrimination claims concerning the construction of a new law school in Newark, and learned much of the problems of addressing employment discrimination claims.

From 1965 to 1967, I served as Chief of Conciliations for the U.S. Equal Employment Opportunity Commission. Part of my responsibility was to devise remedies for discrimination. From 1969 to 1971 I served as consultant to Arthur A. Fletcher, the Assistant Secretary of Labor for Employment standards. Much of my work involved the development of affirmative action programs to eliminate discrimination in the construction industry, including the "goals and timetables" program which was first developed in the Philadelphia plan. During that same time, I worked closely with Jim Blair, then Director of the New Jersey Division on Civil Rights in a clinical educational program at Rutgers Law

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School. The Division adopted a number of programs proposed by the project aimed at the active enforcement of the Law Against Discrimination.<sup>4</sup>

From 1977-1979, I served as consultant to EEOC Chair Eleanor Holmes Norton, and was principally responsible for the development of the EEOC guidelines on Affirmative Action, 29 C.F.R. 1608, which describe lawful ways in which employers may act to provide employment opportunities for minorities and women. These guidelines are still in effect, despite the critical attitude of the national administration toward affirmative action during the last ten years.

My writing, some of which has been cited by the United States Supreme Court, during the entire period has addressed issues concerning opportunities for minorities and women, primarily in employment. I have also specialized my teaching in areas involving problems of equal opportunity.

I have reviewed SCJ No. 23, and find one nearly insuperable difficulty with it. I would like to assist the sponsors in overcoming that difficulty. The difficulty is both practical and legal. Given the timing of the proposal in relation to the

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<sup>4</sup>. See Alfred W. Blumrosen and James Blair, *Enforcing Equality in Housing and Employment through State Civil Rights Laws* (1972).

proceedings in connection with the Englewood Cliffs school regionalization case, it will be obvious to all, that the proposal is intended to prevent the use of regional school systems to improve educational opportunities for minorities. The proposal will be viewed as a attempt to further buttress a wall around minority citizens who live in the cities, and face great difficulties in moving into the suburban/exurban areas where living conditions and educational opportunities are better.

No amount of personal protestation on the part of the supporters of the amendment will obscure the relationship between the amendment and the Englewood Cliffs case. The statement that the purpose is to preserve local school districts is too easily converted into one of preserving white only schools.

If this impression is created-- and it seems to me unavoidable-- there may be great and severe public protest if the matter is placed on the ballot. Even the voters in Louisiana rejected David Duke. Is there reason to think the voters of New Jersey will support a proposal which is so transparently aimed at racial separation? Thus I think placing the proposal on the ballot under current conditions is a error in judgment of the first order, because it will sharpen racial divisiveness in this

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state, whether or not that is the subjective desire of its proponents.

Secondly, I think it is a legal error, because the conjunction of the timing of the proposal with the Englewood Case gives rise to the clear inference that the purpose of the proposal is to prevent racial integration which would otherwise take place under New Jersey law. If this is the case, then the proposal is violative of the 14th amendment to the U.S. Constitution.

I am here to help you out of these dilemmas. It will not be enough to persuade either the people, or the courts, that there is an innocent or permissible purpose behind the amendment, for its supporters to proclaim their good faith support for local control. Such bare protestations of innocence will not overcome the inference that the proposal seeks to perpetuate school segregation. However, the adoption of a series of practical steps aimed at integrating housing in the state of New Jersey would prove that the intention was not to perpetuate the existing segregated school patterns. An effective program of residential integration will make clear that the proponents of amendment are not seeking to preserve school segregation. Residential integration would automatically integrate school districts. Therefore, I will suggest a seven point program that seeks the genuine

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integration of housing in New Jersey, as a way of proving your good intent. If the supporters of this amendment secure the adoption of this program, or one like it, the inference that they seek to maintain racial segregation will be rebutted.

Before describing this program, let me make clear that this is not an idea developed merely to oppose the proposed amendment. In the 1990 issue of the Yale Law and Policy Review, I proposed what I called "leap frogging," the building of small unit public housing beyond the suburban ring, to allow and encourage those residents of the central cities who wished to do so, to move out of the disastrous conditions in which they live. New Jersey has much lightly developed country, and it is as easy to travel in from exurbia to jobs in the suburban areas as it is to travel out from the center city to those jobs. After describing the "mismatch" between lower skilled jobs available in the suburban areas and higher skilled jobs in the central cities for which minorities are not prepared, I wrote:

....the twin problems of high minority unemployment and social decay in the inner cities may be alleviated if impoverished minorities trapped in the urban ghettos were helped to live elsewhere, through public or publicly - assisted housing located beyond the central city/suburban area. Much of the housing in the cities where minorities live a segregated life is public housing, which need not be built solely in the

inner cities. Land and building costs in exurbia would be lower, employment opportunities comparable, and commuting to employment in the suburbs as feasible.

Providing mobility to the poor, however--allowing those who wish to do so to "leap frog" out of the decay and social disaster of the city--is not yet part of the current civil rights agenda.<sup>5</sup>

I would go further, here, and say that the effort at housing integration in the 1960's by enforcement of federal and state fair housing laws was indeed one of those "sixties ideas" that has not worked. It is time for "new thinking" about how to deal with our current problems. One of the ways--aside from attempting to "build" the inner cities-- is to facilitate movement out of them. My proposed plan is as follows:

1. Public housing built in exurbia in small units, as I proposed two years ago;

2. Expanding the "first home owners" mortgage assistance program to focus on residents of the inner cities to enable them to move out;

3. Facilitating movement of persons on welfare who are trying to raise children from the inner cities to other parts of the state where educational opportunities appear better;

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5. Alfred W. Blumrosen, "Society in Transition I: A Broader Congressional Agenda for Equal Employment--the Peace Dividend, Leapfrogging, and other matters, 8 Yale Law and Policy Review 257 (1990).

4. Increasing funding for the Division on Civil Rights so that it could enforce anti discrimination laws against suburban and exurban landlords by implementing the landlord reporting rule, which was developed in cooperation with Rutgers Law School, and has been in place for several years. The Division has not had the funding to make use of these reports to assure non discrimination by landlords;

5. Increasing funding for the Division on Civil Rights so that it can enforce the prohibition on discrimination in lending practices of banks and other credit granting institutions, all of which are illegal under NJSA 10:5-12 (1);

6. Establishing a state operate social service unit devoted to assisting minority families with children to relocate outside of the central cities and the suburban ring;

7. Providing funding assistance to those municipalities which do absorb significant numbers of persons from the central cities, and consequently must spend more on social and educational services.

Reducing population pressures in the central cities might increase the ability of those cities to cope with their difficult problems.

In short, while the cities might be made viable, it is time



to facilitate movement out of them. There is no point in seeking residential facilities for largely poor people in rich or expensive neighborhoods. That is why I suggest leapfrogging beyond the suburban areas, to the "third ring" or exurbia.

Part of the reason why I believe this plan would work is an experience I had when speaking in Allentown, some years ago. I noticed a large number of Hispanic people in the audience, and asked them how they happened to be there. They told me that, in the sixties, Bethlehem Steel undertook a major recruiting program focussed on Puerto Rican people living in New York. They had moved to the Allentown area, and remained after Bethlehem Steel's operation declined. I asked if they visited their families and friends in New York. They said they did. I asked if they wanted to move back to New York. They said no, who would want to live there, when we can be here. Allentown is just across the Delaware from Phillipsburg.

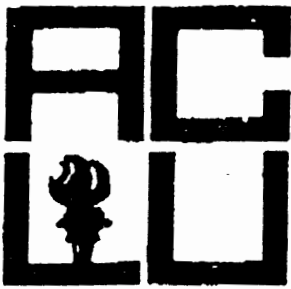
If the supporters of Concurrent Resolution 23 endorsed and secured the enactment of a program of the type described here, then the inference that they seek to maintain racial segregation by the adoption of resolution 23 would be rebutted. If they decline to endorse or participate in such a plan, the inference

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is strengthened. Without a meaningful positive plan to assist those who wish to do so to get out of the areas of greatest social disaster, I think the inference of racism is unavoidable in both the public debates and in the courts. The people of New Jersey should not be subjected to such a debilitating experience.

Therefore, I urge upon all the supporters of the proposed amendment that they endorse and actively work for such a housing integration plan as I have described, and will hold myself available to assist in the effort. Thank you.

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## American Civil Liberties Union of New Jersey

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Edward Martone  
Executive Director

June 8, 1992

### TESTIMONY AGAINST SCR 23

Lisa Glick Zucker, Legal Director  
American Civil Liberties Union of New Jersey

The American Civil Liberties Union recognizes that the right to equality of educational opportunity is a civil liberties concern. An adequate education is a fundamental underpinning to the exercise of constitutional rights of speech and citizenship. More importantly perhaps for today's hearing is the undeniable fact that the public schools with the greatest deficiencies tend to be those that serve largely poor and minority student populations.

As Justice Marshall, dissenting from the Supreme Court's decision in Board of Educ. of Oklahoma City v. Dowell, 111 S.Ct. 630, 643 n.5 (1991) observed: "Because of the relative indifference of school boards toward all-Afro-American schools, many of those schools continue to suffer from high student-faculty ratios, lower quality teachers, inferior facilities and physical conditions, and lower quality course offerings and extracurricular programs."

New Jersey has some of the most segregated public schools in the country. Since 1954 our nation has recognized as a matter of law that in the field of public education, "separate but equal"

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has no place. Separate educational facilities are inherently unequal and thus unconstitutional. Brown v. Board of Education, 347 U.S. 483 (1954).

SCR 23 is a bill designed to keep minority children and white children apart, in separate facilities, and if by chance they should complain or ask the court for relief when the local school board has failed take steps to eradicate the separate school systems, SCR 23 would close the door on them. By prohibiting the courts and the legislature from mandating regionalization as a remedy for school segregation and discrimination, the State of New Jersey would be amending its constitution to declare that while they believe segregation and discrimination to be unlawful, meaningful relief may not be available. It's like telling a child she has a right to eat, and then withholding her food.

SCR 23 is not about education or home rule, it is about racism. The concept of regionalization -- making neighboring districts part of one large district to achieve racial balance -- is viewed by lawyers and education experts alike as a possible way to alleviate discrimination. At a time when race relations, racial segregation and discrimination are more troubling than ever, the State of New Jersey must take the lead in breaking down the dual school system that had been created for white and minority students. The courts and legislature need more options not less to solve this problem. If regionalization is fearful to some, it can only be because they view the minority schools as inferior and thus wish to prohibit these schools from becoming

part of their district. If the minority schools are inferior, however, that is all the more reason to take steps, including regionalization, to allow minority children equal access to the better schools. SCR 23 amends the New Jersey Constitution to maintain the separate school systems that were found unconstitutional almost 30 years ago in Brown v. Board of Education.

While school authorities may have the primary responsibility for assessing and solving these problems, the United States Supreme Court and the Supreme Court of the State of New Jersey have reaffirmed year after year that if school authorities fail in their affirmative obligation to at least address the discrimination or segregation, judicial authority may be invoked. The court does not step into the shoes of the local school board; judicial authority enters only when local authority defaults. Swann v. Charlotte-Mecklenburg Board of Ed., 402 U.S. 1 (1971). It is not only permissible, but the duty of the courts to eliminate school segregation and if that necessitates ordering regionalization of segregated districts, the New Jersey constitution must not stand in the way.

Particularly distressing, is the fact that SCR 23 totally disregards the historic and important role our state courts and state constitution have played in enforcing civil rights and civil liberties. In many instances, the New Jersey Constitution has provided the residents of this state greater protection for their individual rights than the protections contained in the federal constitution. See e.g. Abbott v. Burke, 100 NJ 269

(1985); Right to Choose v. Byrne, 91 NJ 287 (1982); State v. Schmid, 84 NJ 535 (1980).

In short, the New Jersey Constitution exists to protect fundamental rights, like the right to a quality education, not as a vehicle to cut back on these rights. As a New Jersey Constitutional scholar recently noted, "I have been asked many times what flaws are there in the 1947 Constitution, and what changed I would recommend to the 1947 Constitution. I do not like things to change when they are working well, and I frankly do not see any flaws in the Constitution of New Jersey."

Williams, The New Jersey State Constitution (1990).

STATEMENT ON SCR 23 (1R)

Kenneth Carlson  
Graduate School of Education  
Rutgers - The State University  
June 8, 1992

I am opposed to Senate Concurrent Resolution Number 23.

The resolution is based on three assumptions. All three are debatable, and fortunately all are testable.

The first assumption is that "forced regionalization reduces educational effectiveness by minimizing the communities' identification with the schools." However, it is conceivable that the identification can actually be intensified depending on how the regionalized district is operated. For example, a regionalized but decentralized district, using school-site management, creates school-based communities. Each of these communities derives its existence and purpose from a school. Such an educational community is directly and continuously involved in the operations of the school. Regionalization can serve as a catalyst for creating the new school-based communities because it forces a rethinking of administrative organization. In addition, the very controversy attendant upon regionalization should enliven and sustain identification with the schools.

Community identification is not all that makes a school effective. An effective school is one that has enough curricular breadth to serve all the students. The range of courses a school has is a key concern of the Supreme Court and the Quality Education Commission. In small schools where there are not enough students to make advanced courses financially feasible, bright students are denied the full development of their abilities. Small schools may be cozy for adults, but they are not the best for youngsters.

The second assumption in SCR-23 is that regionalization does not save money. Ernest Reock, director of Rutgers Bureau of Government Services, has made some interesting observations in support of this assumption. But here again the assumption is too sweeping. Depending on how regionalization is carried out, and on how long a view one is willing to take in measuring the results, it can save money. Regionalization certainly makes possible economies of scale and a reduction in administrative overhead. If the regionalized district is configured the right way, there could even be lower transportation costs. It is impossible to compute the cost to society of students who have been inadequately educated due to the attenuated curricula of small school districts, but we all know there are such costs.

The third, and last, assumption behind SCR-23 is that forced

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regionalization will not advance "important societal goals." A well-educated citizenry is an important societal goal. In a democracy, being well educated means more than having technical skills or academic knowledge. It means the ability - and the willingness - to engage in collective problem solving. We have tried to solve the problem of race in New Jersey by segregating the parties to it. Segregation has not worked in New Jersey any better than elsewhere in the nation, and we have an unusually extreme form of it. Segregation does not work because it is not a solution; it is a device for ducking the problem.

Confronting America's racial dilemma will not be comfortable. But the confrontation can have enormous educational and social value. The challenge is to make it an educational experience of value to all parties, so that intolerance, which, at least in its overt forms, has been on the rise in recent years, is reduced. Intolerance is a great inhibitor of education, but we cannot overcome it without education. And the education has to be direct and experiential, not the soporific homilies students hear during Black history month.

Please do not foreclose on the economic, educational, and social promise of regionalization by arranging to have your hands tied and those of your successors, and then waiting for regionalization to be done by people who are more politically vulnerable and less sophisticated than you. And please don't pass the buck to an emotional arena where there cannot occur the dispassionate analysis of which you are capable. Regionalization is a complicated and highly charged issue. It cannot be simplified for ballot purposes.



June 8, 1992

Senator John H. Ewing  
Chairman  
Senate Education Committee  
Legislative Office Building, CN 068  
Trenton, NJ 08625-0068

Dear Senator Ewing:

I am writing concerning SCR 23 - "A Concurrent Resolution proposing to amend Article VIII, Section IV of the Constitution of the State of New Jersey by the addition of a new paragraph." There is a public hearing on the legislation which is scheduled for Monday, June 8th.

While I am writing to you as a citizen, I am a faculty member at Rutgers, The State University of New Jersey, an economist, and a consultant to state and local governments. For fifteen years, I have researched and written in the areas of intergovernmental affairs, state-local finance and organization, and school finance. As a result, I am familiar with these policy areas in New Jersey and across the fifty states. With that background experience, I believe that as well-intentioned as SCR 23 is meant to be, it is not sound public policy. I urge that you vote against SCR 23.

There are three reasons for my opposition to the legislation.

First, I generally do not believe that the State Constitution should be used as the instrument to resolve today's public policy disputes. What appears to be a timeless principle of public policy, may be nothing more than a temporary measure to resolve a policy difference. I am concerned that SCR 23 is just such a temporary measure. The legislature should come to grips with the policy problem rather than adopting an amendment to the State Constitution.

Second, there is research evidence that supports the consolidation (forced or voluntary) of local school districts under certain circumstances. Depending on the circumstances, local school district consolidation can improve "educational effectiveness," save money, and secure "other important societal goals," for example, racial integration. Anyone who dismisses the potential

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benefits associated with the consolidation of local school districts misreads the research conclusions in this area. There are times when consolidation is an appropriate public policy tool. There are also times when it is not appropriate. A constitutional prohibition on the consolidation of local school districts denies the opportunity to New Jerseyans to benefit from this organizational reform.

Third, given the fiscal conditions of the state and given the number of school districts in New Jersey, the consolidation of school districts may be an option that the legislature will be forced to explore in the near future to order to maximize the returns on New Jersey's scarce educational dollars. And, most important, consolidation is a policy option to which the legislature, not the State Constitution, should speak.

Thank you for considering my opposition regarding SCR 23.

Respectfully,

  
Henry J. Raimondo  
20 Dorothea Terrace  
Belleville, NJ 07109

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Written Testimony Submitted to  
the New Jersey Senate Education Committee  
in Response to SCR No. 23

The basic premise of SCR No. 23 is flawed. There is no evidence to support to assumption that consolidation or regionalization of school districts is inherently destructive, reduces educational effectiveness, or that a community's "identification with the schools is minimalized". There is evidence, however, to support the assumption that a process of informed, well planed, and thoughtful consolidation of districts can improve educational quality for all concerned and, in many instances, can save money.

Consolidation and regionalization of schools have been an integral part of American education across the nation for generations and will continue to be an "option of choice" as demographic characteristics, educational needs, and resources change . Consolidated or regionalized schools provide a useful educational option at a time when American education in general must improve dramatically. Schools in America, and New Jersey is no exception, must keep pace with the burgeoning, changing knowledge base students need to master and the need for today's youth to function effectively as capable adults in a diverse world and a competitive global economy.

Perhaps the most significant argument against SCR No. 23, however, is that no educational option should be prematurely or unwisely closed off to educational planners and policy makers, particularly when the basis for closing off the option stands on weak theoretical and practical ground. By proposing SCR No. 23, and attempting to amend the State Constitution, the legislature is also overstepping its "turf" and infringing on the traditional balance of power between the executive, legislative, and judicial branches of our democratic system of government. SCR No. 23, deliberately or unintentionally, usurps the authority of both the executive and the judicial branches of state government. While it may not be "unconstitutional--on its face", it is "anti-constitutional--in its effects". It should also be kept in mind that increasing educational quality needs to be the primary motivating

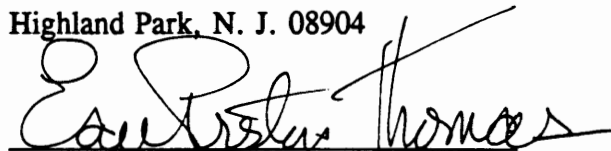
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concept underlying legislative actions that affect the education of New Jersey's youth.

This resolution is about race, it is not about education. On its face, its intent appears to be to counter any future consolidation or regionalization efforts that might involve racially, ethnically, and socio-economically different school populations. In terms of its anticipated outcomes, SCR No. 23 is segregationist. That is vividly apparent and the resolution's justifying statement that inaccurately alludes to educational inefficiency and a vague and unsubstantiated "notion" about communities' identifying with their schools, mask its apparent intent and outcomes. The only cogent rationale for this resolution is if one assumes its sponsors are committed to segregationism and intend to close off any options that could be used in a desegregation process. The apparent rationale, intent and outcomes of SCR No. 23 also contrast starkly with the spirit and recommendations of the Quality Education Commission's recent report. The rationale of SCR 23 seems little more than an interest in maintaining the "two New Jerseys" and insuring that many New Jersey children continue to have a segregated education. It wrongly assumes that consolidation and regionalization are primarily approaches that will be used to reduce segregation.

Consolidation and regionalization have been used to improve educational quality as a result of the effects on racial or socio-economic segregation, but those are distinct and different issues, which are best debated and adjudicated solely as desegregation issues on a case by case basis. To close off consolidation and regionalization as educational options because they have in some instances been used as means to desegregate segregated schools, is like "throwing out the baby with the bath water"--it can irreparably damage attempts to achieve quality education.

Submitted By: Earl Preston Thomas  
102 South 4th Avenue  
Highland Park, N. J. 08904

  
Earl Preston Thomas June 8, 1992

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July 2, 1992

Senator John H. Ewing  
Chairman, Senate Education Committee  
Office of Legislative Services  
135 W. Hanover Street - CN 086  
Trenton, NJ 08625

Re: Senate Concurrent Resolution 23

Dear Senator Ewing:

I very much appreciate the Education Committee holding open the record of hearings on SCR 23 to afford me the opportunity to comment. In my June 8 letter I advised you that I was in Anchorage, Alaska, serving as Administrator of Exxon Valdez Claims for the Trans-Alaska Pipeline Spill Fund, and unfortunately that task kept me out of New Jersey for longer than expected. Unfortunately, I understand that since that time, the Committee has reported out the bill and the Senate has passed it. I recognize, therefore, that my remarks will be of no effect before the Senate. I nonetheless seek to make them a part of the public record so that my opposition to this foolish and indeed racist effort to amend the Constitution will be a part of the public record. This is, I believe, particularly important in light of the sparseness of the record which the Committee developed, the paucity of public debate on this highly significant issue and the alarming alacrity with which this amendment has been moved through the legislative process.

Since June 8 I have given further thought to the purpose and impact of SCR 23, and I am still strenuously opposed to it. The proposed constitutional provision, if adopted, would attempt to prevent regionalization of school districts by state

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educational officials and by courts. I choose the word "attempt" advisedly, because it is my opinion, for the reasons set forth below, that the attempt is likely to fail. The proposed prohibition would be, first, bad public policy, and second, a violation of the United States Constitution.

The policy issues are clear. New Jersey is the most densely populated state in the United States and among the smallest geographically. It is also one of the most, if not the most, racially segregated. That racial segregation occurs both in housing patterns and in school enrollments. The consequences of this segregation were well known twenty-five years ago when the Governor's Select Commission on Civil Disorder made its Report on the 1967 riots. It was apparent then, and remains apparent now, that fragmentation of local government in this tiny but highly urbanized state was a major cause of the inability of government to deliver needed services--especially education. The Commission wrote:

Financial incentives should be provided which are designed to encourage consolidation of services as speedily as possible. However, such financial and administrative consolidation should in no way conflict with effective delivery of service and community involvement at the neighborhood level.

Some Commissioners, while they approve this recommendation, believe that it falls short of what is required in the present circumstances. They believe that the very structure of municipal government in New Jersey, with revenue raising, zoning and planning functions fragmented among 567 municipalities and 578 school districts, is the largest contributing factor to the urban problems outlined in this report. They believe that the power of local municipalities to adopt restrictive land use patterns, which exclude lower income people while attracting industrial and commercial ratables, contributes substantially not only to the inability of the older cities to finance essential services, but also to the steady increase of segregated urban housing and education. In their view consolidation of municipalities and school districts, and regionalized zoning and planning are the essential first steps toward any permanent relief of these

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parallel sources of urban tension. They fear that if legislative action is not taken to break down the legally condoned barriers which have largely confined the Negro to the older cities these centers of segregation will, despite well intentioned remedial action, become increasingly ungovernable. They recommend legislation, granting State financial incentives to encourage consolidation of municipalities and school districts, and requiring regional control over zoning and planning.

Some Commissioners feel that many municipalities which are now seeking to build new sources of strength and vitality will be deprived of their ability to do so through political consolidation. Therefore, they advocate consolidation of services as a practical and realizable step at this time.

Governor's Select Commission on Civil Disorder, Report for Action at 162 (1968).

In the two-and-one-half decades since those observations were made, the State has largely ignored the problem created by the fragmentation of government. The New Jersey Supreme Court has struggled with land use patterns which contribute to segregation in the Mount Laurel cases. The Court's efforts have been largely unsuccessful, primarily because of legislative efforts to insure that local governments retain the power to exclude lower class (mostly minority) residents. In the field of education the Supreme Court, first in Robinson v. Cahill and more recently in Abbott v. Burke, has attempted to deal with the inadequacies of schools segregated by race by addressing fiscal disparities. Here, too, the legislative effort has been directed more at frustrating than at implementing the Court's efforts.

The Robinson and Abbott strategy of equalizing school financing as a means of implementing the thorough and efficient education clause of the New Jersey Constitution is important. That strategy is, however, incomplete because it ignores the fundamental psychological fact, recognized by the United States Supreme Court in 1954 in Brown v. Board of Education, 347 U.S. 483 (1954), that even if fiscal equality were achieved, segregated schooling would nevertheless still be inferior. Minority students in single-race schools would still receive

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the message, thirty-seven years after Brown, that they are not fit for education in the mainstream of American life. The cost to New Jersey's economy of the failure of our racially identifiable schools to produce citizens capable of contributing as adult members of society is staggering, and growing every year.

It seems clear, at least to me, that the next strategy in implementing the Education Clause of the New Jersey Constitution must be one which addresses the inherent inadequacy of single-race schools and school districts. It is also clear that the single most significant barrier to addressing that inadequacy is the fragmentation of school districts, which is its principal cause. A public policy designed to preserve the status quo in education in New Jersey public education will doom the state to economic decline and social unrest.

Entirely aside from the foolhardy public policy that SCR 23 represents, however, one cannot ignore its obvious racial motivation. There is a patent connection between the issues being litigated in Board of Education of the Borough of Englewood Cliffs v. Board of Education of the Borough of Englewood and Board of Education of the Borough of Tenafly and the introduction of SCR 23. The proposed amendment is designed to prevent state education officials and state courts from interfering with efforts to prevent white flight from integrated schools or to integrate single-race schools. The intention is to adopt as the constitutional policy of New Jersey a protection of actions motivated by racist attitudes. The message delivered to minority residents of the state by the adoption of the proposed constitutional amendment will be devastating.

The racial motivation of the sponsors of SCR 23 is in my opinion sufficient to assure that the courts will eventually hold that it violates the Fourteenth Amendment of the United States Constitution. Racially motivated state constitutional provisions, even when facially neutral, cannot survive Fourteenth Amendment scrutiny. Hunter v. Underwood, 471 U.S. 222 (1985) (facially neutral voter disqualification constitutional provision intended to exclude blacks from polls is unconstitutional); Reitman v. Mulky, 387 U.S. 69 (1967) (facially neutral referendum position intended to prevent housing integration is unconstitutional). Here, that racial motivation emerges most clearly from the timing and manner in



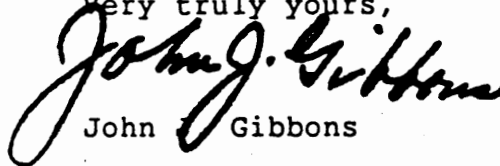
CRUMMY, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE

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which this provision has been rushed through the legislature.  
See Village of Arlington Heights v. Metropolitan Housing  
Development Corp., 426 U.S. 252, 267 (1977).

The members of the New Jersey Legislature have taken an oath to uphold the Constitution of the United States. Voting in favor of SCR 23 would, I suggest, violate that oath. SCR 23 should have been defeated.

Very truly yours,

  
John J. Gibbons

JJG/llm

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