IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

CRATON LIDDELL, et al.,	)	
	)	
Plaintiffs,	)	CIVIL ACTION NO.
	)	72-100c(4)
v.	)	
	)	
THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, et al.,	)	(EXEMPT FROM CIRCULATION PURSUANT TO H(2278)83)
	)	
Defendants.	)	
	)	

BRIEF OF THE UNITED STATES ON
PROPOSED SETTLEMENT AGREEMENT

I. INTRODUCTION

On April 8, 1983, this Court by Order H(2278)83 required the parties to submit briefs in support of their position on the proposed settlement agreement. This brief is in response to that Order.

The proposed settlement agreement in question, H(2217)83, was filed with the Court on March 30, 1983. The report of the Special Master which preceded the proposed settlement agreement recommended that the Court order the parties to report to the Court by April 4, 1983 whether they agreed to adopt the detailed implementation plan as a settlement agreement. On April 4, 1983,

the United States, pursuant to order H(2224)83, responded that we could not, under the circumstances, agree to endorse fully H(2217)83. In that response we noted that the government had not completed a full analysis of each provision of the agreement and stated that we assumed each party would have an opportunity to raise further questions at a fairness hearing.

We applaud the efforts of the parties to settle this litigation, and firmly believe that a voluntary settlement will best serve the interests of the St. Louis area. The agreement represents, in our judgment, a promising step in that direction. Nonetheless, questions remain. This brief highlights three major problem areas raised by the provisions of the proposed settlement agreement. We assume that these concerns, plus questions raised by other interested parties, will be addressed by the proponents of the agreement at the scheduled hearing.

In H(2261)83 we stated that circumstances at this time justified the scheduling of a fairness hearing. We did so because we believe that a fairness hearing is the appropriate forum for the proponents of the settlement agreement to bring forward the evidence which they believe would justify this particular settlement. Such a hearing also affords the non-party objectors to this particular plan a structured opportunity to state their views to the Court.

We believe that the agreement of most, if not all, of the school district parties, and of those plaintiffs who have expressed specific claims for interdistrict liability or

relief, should encourage the Court to give serious consideration to the approval of the proposed settlement agreement. However, because of the concerns expressed in this brief we cannot recommend that the Court approve the proposed settlement agreement in its present form.

We wish to stress at the outset that there are many positive points contained in the proposed settlement. These positive points must be balanced against the perceived problems contained in the current proposal. A voluntary settlement is definitely in the best interests of the St. Louis community. A truly final settlement of this case will alleviate community concerns as to the uncertainty of pupil assignment in the future. The fact that three plaintiffs and at least twenty suburban school districts support this particular settlement is a significant indication that the agreeing parties perceive this settlement proposal as a preferable alternative to current litigation.

A plan which provides that parents and students retain control over the assignment of children to public schools and that desegregation is to be accomplished voluntarily is a definite asset in maintaining broad community support for the public school system. The proposal provides assurance that the current excellent recruitment efforts of the 12(a) plan will be continued. Also, the approximately 3000 students who have volunteered for interdistrict transfers under that plan will have an opportunity to receive a quality desegregated education. Finally, the plan's

extensive magnet school provisions and quality education proposals assure a continuation of the efforts to improve the quality of education in the City schools.

The question for the Court is whether these advantages outweigh specific problems in the mechanics of the plan's operation. We suggest that these advantages are significant enough that the Court should not discard the current settlement proposal. Rather, the Court should give the parties guidance on the changes necessary to reshape this proposal into an acceptable, final settlement agreement that all parties can join and the Court order into effect.

Three major provisions which should be altered before the plan can be approved by the Court must be singled out for special comment. The three provisions are those relating to the nature of the "final judgment" to be given school districts, faculty hiring, and sources of funding.

1. The proposal contains several provisions for school districts receiving "final judgments" (pages II-2, II-3, and XII-1). Some of these judgments would purport to resolve suburban intra-district segregation questions which are not the subject of this lawsuit. The nature, effect, and form of these "final judgments" is not explained. We recommend that a final settlement should be in fact a final settlement. A school district's obligations

should be clearly set out. The Court should gauge a district's compliance with the consent decree by the district's conscientious, good faith efforts to achieve its objectives. While full achievement is the desired result, the settlement should not define compliance solely in terms of reaching some numerical objective. Plainly, a school district receives nothing by a settlement that subjects it to mandatory remedies five years hence notwithstanding the fact that it has engaged in a concerted effort to meet its Plan Ratio, but through no fault of its own has fallen short. Compliance must be measured in realistic terms, based on what could actually be accomplished in the given circumstances and on honest efforts to reach that end; it should not be measured on inflexible and largely arbitrary projections that lock a school district into what ultimately turns out to be an unrealistic student ratio. The current proposal takes the latter approach and should, if it is to be at all meaningful as a final resolution for the school districts, be modified to recognize good faith efforts as full compliance in appropriate circumstances where the failure to meet rigid numerical objectives are satisfactorily explained as due to circumstances for which the school district cannot legitimately be faulted.

2. The Faculty section (Part VI) of the proposed settlement agreement requires many of the suburban school districts to make

hiring decisions based solely on race. A sliding scale of mandatory quotas is imposed on the hiring practices of districts which are not 25% black in their student racial composition (or 16% black in their faculty). No provision is made for those teachers in the City who will be displaced from their jobs if the plan is to work.

The faculty provisions fall prey to the fatal error of attempting to rectify discrimination against one group by discriminating against another in violation of the 14th Amendment to the U.S. Constitution. This is done in such a fashion as to almost assure future litigation. The proper remedy for hiring discrimination is to assure non-discriminatory recruitment. Subsequent selection for employment from a race neutral hiring pool on a non-discriminatory basis assures that no person is discriminated against because of race. The mandatory race conscious quotas set out in the plan can lead only to one of two alternatives: evasion of the Court's Order or racial discrimination. Therefore, portions of the faculty provisions should be redrafted to provide for true non-discriminatory employment hiring practices where no one is accepted or rejected for employment because of their race.

3. The final area of special concern is funding. The proposal requires the Court to issue orders which distribute the cost of the plan in some unspecified proportion between two non-signatories to the plan. The plan will involve substantial cost. The enti-

ties that are designated to bear the cost (the State and the taxpayers of St. Louis) have not agreed to bear the cost. Absent subsequent supplemental liability findings the Court is constricted in what funding orders it can issue. We are unaware of any basis that the proponents advance to support a tax increase in the City of St. Louis. On the present record we oppose such an increase.

While it is clear that the State was ordered to pay the costs of the current 12(a) plan, that plan was somewhat more modest in its potential expenditures. The proposal contemplates major additional responsibilities being cast upon one of the parties, the State, which has not consented to the proposed settlement agreement and which, it is assumed, will bear a significant portion of the costs.*/ The proposed settlement agreement cannot serve as an independent basis for imposing costs on the State, however. Therefore the proponents must demonstrate why the increased level of funding must be borne entirely by the State and why that increase is justified. Moreover, missing from the record at the time of the drafting of this brief is any estimate of the plan's cost by one of the proponents of the plan. The

*/Illustrative of this action required of the State which is not supported by the record is the provision contained in paragraph B(4) on p. X-3: "The State shall not decrease its level of funding for education below the amount of funding established for the 1982-83 fiscal year." Presumably, the purpose of this provision is to prevent the State from cutting back on its current educational expenditures in order to fund the State's extensive fiscal responsibilities under this plan. However, since the costs of this plan would be funding for education, the phrase does not achieve its purpose.

State has estimated potential cost at being in excess of one hundred million dollars per year. It would seem that detailed proposed budgets would be a necessary precondition to approval of the plan. The proponents should be required to present definite projections as to what it is anticipated the plan will do and will cost, and how the expense is to be allocated among the parties.

Reluctantly, the United States cannot fully endorse the proposed settlement agreement as drafted. The Court should accept the structure of the settlement agreement but require that the specifics be redrafted to provide for a fair, reasonable and adequate resolution.

Respectfully submitted,

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