

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
88th General Assembly
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As Engrossed: S2/16/12

SCR 5

By: Senator G. Baker
By: Representatives Summers, *English, Cheatham*

SENATE CONCURRENT RESOLUTION

OFFERING SUPPORT TO THE GOVERNOR AND ATTORNEY GENERAL TO TAKE EVERY LAWFUL AND RESPONSIBLE ACTION WITHIN THEIR RESPECTIVE AUTHORITY TO SEEK AN IMMEDIATE END TO THE PULASKI COUNTY DESEGREGATION LITIGATION AND THE 1989 SETTLEMENT AGREEMENT TO WHICH THE STATE OF ARKANSAS IS NOW A PARTY.

Subtitle

TO SUPPORT THE GOVERNOR AND ATTORNEY GENERAL TO TAKE LAWFUL ACTIONS WITHIN THEIR AUTHORITY FOR AN IMMEDIATE END TO THE PULASKI COUNTY DESEGREGATION LITIGATION AND THE 1989 SETTLEMENT AGREEMENT.

BE IT RESOLVED BY THE SENATE OF THE EIGHTY-EIGHTH GENERAL ASSEMBLY OF THE STATE OF ARKANSAS, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

WHEREAS, the case commonly referred to as the Pulaski County Desegregation Case is in its thirtieth year of litigation; and

WHEREAS, since the 1988-1989 school year, the State of Arkansas has paid over \$1 billion in total, and approximately \$70 million dollars annually, to the three (3) Pulaski County school districts in desegregation funding; and



WHEREAS, it was found by the Federal District Court in its May 19, 2011, ruling in the case concerning the funding provided by the State of Arkansas to the Pulaski County school districts, "...that one of the problems with this case is that the State of Arkansas pays millions of dollars to these districts, along with the Little Rock School District, to aid their desegregation efforts."; that "The problems with this process is that it results in an absurd outcome in which the districts are rewarded with extra money from the state if they fail to comply with their desegregation plans and they face having their funds cut by the state if they act in good faith and comply"; and that "It seems that the State of Arkansas is using a carrot and stick approach with these districts but that the districts are wise mules that have learned how to eat the carrot and sit down on the job. The time has come for all carrots to be put away. These mules must now either pull their proverbial carts on their own or face a very heavy and punitive stick", and ordered the cessation of such desegregation funding to the districts; and

WHEREAS, in the same May 19, 2011, ruling, the Federal District Court found that the Pulaski County Special School District had become unitary in three (3) out of twelve (12) areas; the Little Rock School District has been unitary for almost a decade; and on December 28, 2011, the United States Court of Appeals for the Eighth Circuit found the North Little Rock School District completely unitary; and

WHEREAS, all three Pulaski County school districts have been found by the Federal District Court to be unitary in the area of inter-district student assignment; and

WHEREAS, the State had fully performed all specific inter-district remedial obligations required by the courts in the case before entering into the Settlement Agreement, and the Settlement Agreement called for the release and dismissal of the State from the case; and

WHEREAS, the M-M Stipulation and the Magnet Stipulation in the case impose race-based quotas and limit the ability of African-American children in the Little Rock School District to attend magnet schools in the Little Rock School District solely because of their race, in violation of the Equal

Protection Clause of the United States and Arkansas Constitutions; and

WHEREAS, changed circumstances now exist and now is the appropriate time to seek a full and complete end to the case, the Settlement Agreement, and any funding from the State; and

WHEREAS, the General Assembly has passed Act 395 of 2007, which empowered the Department of Education and the Attorney General's Office to seek a negotiated settlement to end the case and the current Settlement Agreement with no substantive impact on the case; and for the districts to achieve unitary status; and

WHEREAS, the General Assembly has passed three (3) additional Acts (Act 2 of the First Extraordinary Session of 2008, Act 242 of 2009, and Act 624 of 2011) extending the time for the State and the districts to negotiate a settlement ending the case and stopping the State's payments; and

WHEREAS, the case has become a financial drain on the State of Arkansas and its taxpayers during hard economic times, with no real and substantive remedial impact remaining to be achieved in the case; and

WHEREAS, the Eighth Circuit's December 28, 2011, ruling, although vacating the Federal District court's order ending the State's payment obligations in the case, did state that "The district court's frustration is understandable, and its conclusions regarding the perverse incentives created by the State's funding may well have some merit", and indicated that the State could move for relief from its funding obligations from the Federal District Court; and

WHEREAS, the case and the legal maneuvering by the Little Rock School District in the case have created dysfunctional and perverse incentives that:

- (1) Prevent a focus on quality education and educational opportunities for children;
- (2) Reward an inefficient and failing educational environment for students in Pulaski County school districts;
- (3) Prevent and frustrate educational accountability for

students trapped in failing schools;

(4) Deny quality school choice opportunities for parents with students in failing schools based upon unconstitutional race-based student assignment plans; and

(5) Are now a basis for an effort to block open-enrollment public charter schools as an option for parents and students in Pulaski County; and

WHEREAS, as long as the case continues, the State of Arkansas and its taxpayers will continue to be forced to bear the costs of supplementing an educational system in the districts which is inefficient and hinders true choice in freedom of education, in direct violation of the State's motto "Regnat Populus" ("The People Rule") and will be frustrated in accomplishing the State's high duty to provide a general, suitable, and efficient free public education to all of its citizens,

BE IT RESOLVED BY THE SENATE OF THE EIGHTY-EIGHTH GENERAL ASSEMBLY OF THE STATE OF ARKANSAS, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN

THAT the Senate and the House of Representatives offer their full support for the Governor and the Attorney General to take every lawful and responsible action within their respective authority to seek and litigate for a court order bringing an immediate end to the Pulaski County Desegregation case and the 1989 Settlement Agreement to which the State of Arkansas is now a party.

/s/G. Baker