



HON. LOUISE DAY HICKS



Boston City Council

NEW CITY HALL
ONE CITY HALL SQUARE
BOSTON, MASSACHUSETTS 02201

December 12, 1975

Honorable John J. Moakley
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Moakley:

As you are aware, there is a great deal of confusion surrounding the legality of the ratification of the Fourteenth Amendment to the Constitution of the United States. By placing South Boston High School under receivership, thereby stripping the duly-elected Boston School Committee of all statutory powers, Federal Judge W. Arthur Garrity has only intensified the confusion not only among constitutional lawyers and historians but among laymen.

I feel it is imperative at this time that the Congress take immediate steps to clarify the whole issue of due process of law for all as guaranteed in the Fourteenth Amendment, and request that you, as a Congressional representative of the City of Boston, co-sponsor legislation with your colleagues from the Massachusetts delegation to establish a special blue-ribbon commission composed of Constitutional lawyers and historians empowered to investigate and report on the circumstances surrounding the ratification of the Fourteenth Amendment.

I feel Congress has no greater priority at this time than to lift the veil of confusion surrounding the Fourteenth Amendment so that due process of law for all may continue unencumbered by doubt on the part of those it was designed to protect.

Sincerely,

Louise Day Hicks

LDH/ke

January 12, 1976

The Honorable Louise Day Hicks
Boston City Council
New City Hall
One City Hall Square
Boston, MA 02201

Dear Councilwoman Hicks:

Thank you for your recent letters regarding Judge Garrity's decision to take direct control of South Boston High School, displacing the Committee elected by the people of Boston to do that job.

As you know, any legislation on this subject would be handled by the Judiciary Committee's Subcommittee on Courts, Civil Liberties and the Administration of Justice.

I know that you will share my disappointment to learn that Chairman Kastenmeier has declined to consider any legislation or even hearings. A copy of his response to my request is enclosed.

Nevertheless, I remain very concerned over the grave Constitutional questions raised by Judge Garrity's unprecedented decision and earnestly hope that his order will be overruled on appeal.

With warmest personal regards,

Sincerely,

JOHN JOSEPH MOAKLEY
Member of Congress

Encl.

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Congress of the United States Committee on the Judiciary

House of Representatives
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January 6, 1976

The Honorable John Joseph Moakley
House of Representatives
238 Cannon Building
Washington, D. C. 20515

Dear Joe:

Since my December 18 letter to you, I have considered the matter of the subcommittee's jurisdiction with respect to the powers of federal judges to issue orders affecting the decisions of elected municipal and local officials. I have concluded that it would be inappropriate for my subcommittee to intervene, either legislatively or by holding hearings, with the relationship between the United States District Court and local governmental units within the city of Boston.

Of the 17 bills presently pending in the Committee on the Judiciary which deal with the issues raised in your letter, only one is assigned to my subcommittee. Therefore, it would seem inappropriate for my subcommittee to initiate hearings on the matter.

In addition, the single bill pending in my subcommittee, and indeed, all proposed legislation other than constitutional amendments, raises serious questions of constitutionality. While Congress may make certain modifications in the procedures of Federal Courts, it clearly lacks the power to prevent citizens from seeking judicial enforcement of their constitutional rights. The Supreme Court stated this principle clearly in Shapiro v. Thompson, 394 U.S. 618 (1969), wherein it stated: "Congress may not authorize the States to violate the Equal Protection Clause (of the Constitution)."

In view of limited jurisdiction of the subcommittee and the obvious constitutional limitations on Congressional intervention

The Honorable John J. Moakley

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in the powers of the Judicial Branch, I regret that it is not possible to schedule hearings in Boston on Federal Court desegregation orders.

Warm regards.

Sincerely yours,



Bob Kastenmeier
Chairman, Subcommittee on Courts,
Civil Liberties and the
Administration of Justice

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