

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF ALABAMA, EASTERN DIVISION

ANTHONY T. LEE and HENRY A. LEE, by
Detroit Lee and Hattie M. Lee, their
parents and next friends; PALMER
SULLINS, JR., ALAN D. SULLINS and
MARSHA MARIE SULLINS, by Palmer
Sullins and Della D. Sullins, their
parents and next friends; GERALD
WARREN BILLES and HELOISE ELAINE
BILLES, by I. V. Billes, their father
and next friend; WILLIE M. JACKSON,
JR., by Mabel H. Jackson, his mother
and next friend; WILLIE B. WYATT, JR.,
and BRENDA J. WYATT, by Willie B.
Wyatt and Thelma A. Wyatt, their
parents and next friends; NELSON N.
BOGGAN, JR., by Nelson Boggan, Sr., and
Mamie Boggan, his parents and next
friends; WILLIE C. JOHNSON, JR.,
BRENDA FAYE JOHNSON and DWIGHT W.
JOHNSON, by Willie C. Johnson and
Ruth Johnson, their parents and next
friends, and WILLIAM H. MOORE and
EDWINA M. MOORE by L. James Moore
and Edna M. Moore, their parents and
next friends,

Plaintiffs,

UNITED STATES OF AMERICA,

Amicus Curiae,

vs.

MACON COUNTY BOARD OF EDUCATION,
HARRY D. RAYMON, Chairman, MADISON
DAVIS, JOHN M. DAVIS, B. O. DUKES and
F. E. GUTHRIE and C. A. PRUITT,
Superintendent of Schools of Macon
County, Alabama; ALABAMA STATE BOARD
OF EDUCATION, Governor ~~GEORGE C.~~
WALLACE, President of Alabama State
Board of Education; AUSTIN R. MEADOWS,
Secretary and Executive Officer of
Alabama State Board of Education;
✓JAMES D. NETTLES, ✓J. T. ALBRITTON,
✓J. P. FAULK, JR., ✓FRED L. MERRELL,
✓W. M. BECK, ✓VICTOR P. POOLE, ✓W. C.
DAVIS, ✓CECIL ~~WORD~~ and ✓HAROLD C.
MARTIN, as members of Alabama State
Board of Education.

Defendants.

FILED

FEB 3 1964

K. C. DOBSON

Clerk

By J. J. N. Deputy Clerk

CIVIL ACTION NO. 604-E

FRED D. GRAY
34 North Perry Street
Montgomery, Alabama

JACK GREENBERG
CONSTANCE BAKER MOTLEY
CHARLES H. JONES, JR.,
10 Columbus Circle

ATTORNEYS FOR PLAINTIFFS

AMENDED AND SUPPLEMENTAL COMPLAINT

I

Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, plaintiffs adopt by reference and reassert the allegations of Paragraph 1 of the original complaint filed herein on January 28, 1963, relating to the jurisdiction of this Court. Plaintiffs also adopt each and every other allegation of said complaint as may be applicable to the facts, events and circumstances hereinafter alleged. This proceeding is necessary in order to protect the rights of the plaintiffs as determined by this Court in its Memorandum Opinion and Order dated August 22, 1963, and to protect the continuing jurisdiction of the Court.

II

Party defendants, in addition to those set forth in Paragraph 5 of the original complaint, are: Alabama State Board of Education, Governor George C. Wallace, President of Alabama State Board of Education; Austin R. Meadows, Secretary and Executive Officer of Alabama State Board of Education; James D. Nettles, J. T. Albritton, J. P. Faulk, Jr., Fred L. Merrell, W. M. Beck, Victor P. Poole, W. C. Davis, Cecil Ward and Harold C. Martin, as members of Alabama State Board of Education. The addition of these party defendants are necessary due to the facts, events and circumstances hereinafter alleged.

III

Defendant Alabama State Board of Education was created and exist under the laws of the State of Alabama. Pursuant to Title 52, Section 14, Code of Alabama, said Board has "the general control and supervision over the public schools of the State", including the control and supervision of the public schools in each of the 67 counties in the State of Alabama. Defendant Governor George C. Wallace is Governor of the State of Alabama and is

President of said Board. Defendant Austin R. Meadows is Superintendent of Education of the State of Alabama and is Secretary and Executive Officer of said Board; James D. Nettles, J. T. Albritton, J. P. Faulk, Jr., Fred L. Merrell, W. M. Beck, Victor P. Poole, W. C. Davis, Cecil Ward and Harold C. Martin are appointed members of said Board as representatives of the districts in which they reside. Defendants are sued in their individual and official capacities.

IV

Plaintiffs bring this action as a class suit pursuant to Rule 23(a) (3) of the Federal Rules of Civil Procedure on behalf of themselves and on behalf of other Negro children and their parents similarly situated residing in the various counties throughout the State of Alabama, all of whom are affected by the policy, practice, custom and usage complained of herein as more fully appears. The members of the class on behalf of which plaintiffs sue are so numerous as to make it impracticable to bring them all individually before this Court, but there are common questions of law and fact involved, common grievances arising out of common wrongs and common relief is sought for each of the plaintiffs, individually, and for each member of the class they represent. Plaintiffs fairly and adequately represent the interests of the class.

V

Plaintiffs show unto the Court the following facts, events and circumstances which have occurred since the filing of the original complaint in this cause which require injunctive relief in addition to that prayed for in the original complaint:

1. On August 30, 1963, in compliance with the Order of this Court dated August 22, 1963, the defendant Macon County Board of Education assigned 13 Negro pupils to the all-white Tuskegee Public High School.

2. Defendant Macon County Board of Education attempted to open Tuskegee Public High School on a desegregated basis on September 2, 1963. However, on that date, State Troopers of the Alabama Highway Patrol, under the command of the defendant Governor George C. Wallace, stationed themselves outside the Tuskegee Public School which the 13 Negro pupils were scheduled to attend. The State Troopers claimed the school was closed pursuant to the order of the defendant George C. Wallace, Governor of the State of Alabama.

3. On September 9, 1963, in the case of the United States of America, Plaintiff, vs. George C. Wallace, et al., Defendants, Civil Action No. 1976-N, this Court enjoined the defendants there, Governor George C. Wallace, et al., from, among other things,

interfering with or obstructing the Macon County Board of Education, their agents, or employees, from administering and operating the Macon County School System in compliance with the Order of the Court in the case of Lee vs. Macon County Board of Education wherein this Court ordered the Macon County Board of Education to make an immediate start, to be effective for the school term commencing September, 1963, in the desegregation of the schools of Macon County, Alabama, through the use of the Alabama School Placement Law, without discrimination on the basis of race or color.

4. Thereafter, when Tuskegee Public School was reopened, all of the white students who formerly attended there transferred to other schools, including Shorter High School and the High School at Notasulga, both schools being public schools in Macon County, and to the Macon Academy, an alleged private school created as a result of the Court's Order integrating Tuskegee Public School.

5. On September 19, 1963, the defendant Austin R. Meadows, by letter, directed the defendant Macon County Board of Education to provide school bus transportation for the white students who formerly attended Tuskegee Public School and who, since the Order of this Court on August 22, 1963, have transferred to the high schools at Notasulga and Shorter, Alabama.

6. The defendant Macon County Board of Education continued to transport said students to said public schools until December 20, 1963. Subsequent to the oral directive of this Court to the defendant Macon County Board of Education to cease transporting said students to and from Tuskegee and Shorter, Alabama, and Tuskegee and Notasulga, Alabama, the defendant Governor George C. Wallace caused said students to be transported to and from said schools in highway patrol cars driven by Alabama State Troopers.

7. On information and belief plaintiffs allege that the defendant Governor George C. Wallace has caused said children to be transported to and from said schools in school buses formerly used by public schools in North Alabama.

8. That in order to assist in supporting the aforesaid private school, Macon Academy, solicitations of contributions have been made from employees of the State of Alabama by the defendant George C. Wallace.

9. On or about January 30, 1964, the defendant Alabama State Board of Education passed a unanimous resolution in substantially the following language:

Be It Resolved that the Alabama State Board of Education hereby orders that the Tuskegee High School be closed, all grades above the 7th grade, and that the teachers be transferred to other schools in the Macon County School System and the children transferred to other schools in the Tuskegee area in accordance with State Board of Education's policy of closing schools where the teacher load is not sufficient to justify paying teachers and in accordance with Title 52, Code of Alabama, 1940, as Amended; and

Be It Further Resolved that the Alabama State Board of Education hereby orders the Macon County Board of Education to provide school bus transportation for the children attending the Shorter-Notasulga schools in Macon County.

10. That on or about January 31, 1964, the defendant Macon County Board of Education released a statement substantially as follows:

The Macon County Board of Education has been advised by the Attorney General of the State of Alabama, acting

as its counsel, that the State Board of Education has the legal authority to issue the order closing Tuskegee High School and that the Macon County Board of Education has no alternative other than to follow the said order. Therefore, the Macon County Board of Education has entered a resolution following the order of the State Board of Education.

VI

The defendant Alabama State Board of Education, pursuant to the laws of the State of Alabama, has asserted that it has general control and supervision over all the public schools in the various counties of the State of Alabama, and it has proceeded to exercise said control as exemplified by the acts alleged above and specifically with reference to the schools in Macon County, Alabama.

Defendant Alabama State Board of Education and the defendants members of said Board, acting under color of the laws of the State of Alabama, have pursued for some time and are presently pursuing a policy, practice, custom and usage of operating the public school system in each of the various counties of the State of Alabama on a racially segregated basis. Defendants maintain and operate a compulsory bi-racial school system in all of said counties in the State of Alabama by use of dual school zones or attendance areas for white and Negro pupils. Using the dual school zones and attendance areas, said defendants make or cause to be made initial assignments of students to the public schools under their control on the basis of race and color. Principals, teachers, and other professional personnel under the defendants' jurisdiction are likewise assigned to schools on the basis of race and color. Students assigned initially to elementary schools designated as "white" are thereafter assigned to high schools similarly designated. Students assigned initially to elementary schools designated as "Negro" are thereafter assigned to high schools similarly designated. In no cases are the assignments of students, teachers, principals or other professional personnel of the white race made to schools

designated as "Negro" schools. Likewise, no assignments of students, teachers, principals, or other professional personnel of the Negro race are assigned to schools designated as "white". Defendants also discriminate against plaintiffs, and the members of the class represented by them, in school construction, the formulation of budgets, and in the disbursement of school funds. Especially, defendants construct elementary and high schools with reference to the maintenance of a compulsory bi-racial school system. Defendants herein also limit the participation in extra-curricular activities in the schools to one or the other race, separately.

VII

Plaintiffs, and the class which they represent, are irreparably injured by the acts of the defendants complained of herein. The continued operation of a compulsory bi-racial school system by defendant Alabama State Board of Education in the various counties of the State of Alabama, including the assignment of pupils, teachers, principals and other administrative personnel on the basis of race; the maintenance of dual zones and attendance areas based on race; the construction of schools on the basis of race; and the programming and planning of extra-curricular activities on the basis of race violate the rights of the plaintiffs, and the members of their class, secured to them by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the due process clause of the ~~Fifth Amendment~~. This irreparable injury to plaintiffs and their class will continue unless and until defendants are enjoined by this Court from continuing to perpetrate the acts complained of herein. Any other relief to which plaintiffs, and those similarly situated, might be entitled would be attended by uncertainty and delay, involve a multiplicity of suits, cause further irreparable injury and

and occasion damage, vexation and inconvenience and deny to plaintiffs, and those similarly situated, substantial relief. That to permit the defendant Macon County Board of Education, pursuant to the order of the defendant Alabama State Board of Education, to close the Tuskegee Public School and to assign plaintiffs, and the class which they represent, to the "schools in the Tuskegee area" is in effect to transfer the plaintiffs to an all-Negro school, and this would deny to the plaintiffs the rights as heretofore determined by this Court in this case by the Decree of August 22, 1963. That to permit the defendants to transport, by Macon County school buses, the white students who previously attended the Tuskegee Public School to schools at Notasulga and Shorter is designed to circumvent and evade the Order of this Court dated August 22, 1963.

WHEREFORE, plaintiffs respectfully pray that that the Court will advance this cause on the docket, enter a temporary restraining order, a preliminary injunction and a permanent injunction as follows:

A. Enter a decree enjoining the defendants and each of them, their agents, representatives, employees and successors in office and all persons in active concert and participation with them from:

(1) Closing the Tuskegee Public School and from transferring the pupils of said school to Tuskegee Institute High School and from transporting by Macon County School bus transportation or otherwise the White children from Tuskegee to Shorter High School and from Tuskegee to the High School in Notasulga, Alabama.

(2) Or in the alternative, enter a decree enjoining the defendants and each of them, their agents, representatives, employees, successors in office and all persons in active concert and participation with them from refusing to enroll the twelve Negro pupils, (who were enrolled in Tuskegee Public School,) in the Shorter High School and the High School at Notasulga, Alabama upon the same terms and conditions as allowed by the White pupils and to require the defendants to provide school bus transportation for said pupils to said schools on the same terms and conditions provided for the White pupils.

(3) From doing any other act which in any way would interfere with and frustrate the rights of the plaintiffs as defined by the Order of this Court, dated August 22, 1963.

B. Plaintiffs further pray that upon a hearing of this cause, the Court will grant the following relief against the following: Alabama State Board of Education, Governor George C. Wallace, President of Alabama State Board of Education; Austin R. Meadows, Secretary and Executive Officer of Alabama State Board of Education; James D. Nettles, J. T. Albritton, J. P. Faulk, Jr., Fred L. Merrell, W. M. Beck, Victor P. Poole, W. C. Davis, Cecil Ward and Harold C. Martin, as members of Alabama State Board of Education. Enter a decree, enjoining the said defendants, and each of them, their agents, attorneys, representatives, employees, successors in office and all persons in active concert and participation with them from:

(1) Continuing to operate a compulsory biracial school system in all of the counties in the State of Alabama.

(2) Continuing to maintain a dual scheme or pattern of school zone lines or attendance area lines based on race or color in all of the

counties in the State of Alabama.

(3) Making initial assignments of pupils to the Public Schools in all counties of the State of Alabama on the basis of race or color.

(4) Assigning teachers, principals and other professional personnel to the Public Schools under their jurisdiction on the basis of race or color.

(5) Approving employment contracts, budgets and disbursing funds on the basis of race or color.

(6) Constructing elementary and high schools in the State of Alabama on the basis of the dual attendance areas based on race or color.

(7) Programming and supporting extra-curricular activities which are limited solely to one or the other of the races.

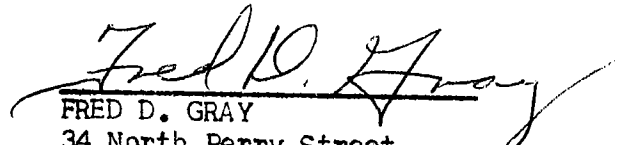
(8) Continuing to make any other distinctions in the operation of the schools under their jurisdiction which are based solely on race or color.

In the alternative, plaintiffs pray that this Court enter a decree directing said defendants to present a complete plan in a period of time to be determined by this Court for the reorganization of the entire school system of the State of Alabama, into a unitary, nonracial system which shall include a plan for the assignment of pupils, teachers, principals and other professional school personnel on a nonracial basis, the drawing of school zone or attendance area lines on a nonracial basis; the allotment of funds, the construction of schools, the approval of budgets on a nonracial basis; the programming of extra-curricular activities on a nonracial basis and the elimination of any other discrimination in the operation of the school system or curricula which are based solely on race or color.

Plaintiffs pray that if this Court directs said defendants to produce a desegregation plan that this Court will retain jurisdiction of this case pending court approval and full and complete implementation of said defendants' plan.

Plaintiffs pray that this Court will allow them their costs herein and grant such other, further and additional or alternative relief as may appear to the court from time to time to be equitable, just and proper.

Respectfully submitted,


FRED D. GRAY
34 North Perry Street
Montgomery, Alabama

JACK GREENBERG
CONSTANCE BAKER MOTLEY
CHARLES H. JONES, JR.,
10 Columbus Circle
New York, New York

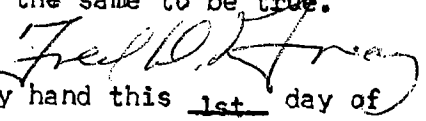
ATTORNEYS FOR PLAINTIFFS

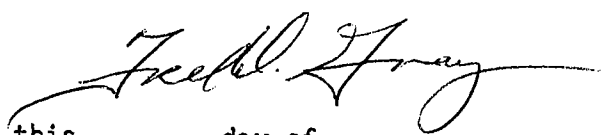
VERIFICATION

State of Alabama
Montgomery County

Before me, the undersigned Notary Public, personally appeared
Fred D. Gray, who being by me first duly sworn, deposes and saith
as follows:

I have read the above and foregoing amended and supplemental
complaint, and know the contents thereof, and that the allegations
thereof are true, except such matters as are alleged on information
and belief, and as to them, I believe the same to be true.

In witness whereof I hereto set my hand this  1st day of
February.

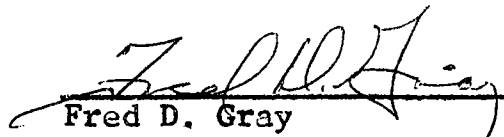

Sworn to the subscribed this 1st day of February.


NOTARY PUBLIC

CERTIFICATE OF SERVICE

I, Fred D. Gray, one of the attorneys of record for plaintiffs, hereby certify that I have on this 3rd day of February, 1964, served a copy of the following pleadings on John Doar, Attorney for the Justice Department by delivering them to him personally and upon ^{Richard}~~Richard~~ M. Flowers, Attorney General for the State of Alabama, Administrative Building, Montgomery, Alabama, Attorney for defendants, by mailing a copy thereof to him, postage prepaid:

1. Motion for leave to file amended and supplemental complaint.
2. Order granting leave to file amended and supplemental complaint.
3. Amended and supplemental complaint.
4. Motion for temporary restraining order.
5. Motion for preliminary injunction.


Fred D. Gray
Attorney for Plaintiffs