

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

FILED

ANTHONY T. LEE, ET AL.,
Plaintiffs,
UNITED STATES OF AMERICA,
Plaintiff and
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.

FEB 3 1964

R. C. DOBSON
Clerk

By
Deputy Clerk

CIVIL ACTION 604-E

TEMPORARY RESTRAINING ORDER

This Court on August 13 and 22, 1963, by orders made and entered herein, enjoined the defendants Macon County Board of Education, Harry D. Raymon, Chairman, Madison Davis, John M. Davis, B. O. Dukes and F. E. Guthrie, Members, and C. A. Pruitt, Superintendent of Schools of Macon County, Alabama, from, among other things, failing to make an immediate start for the school term commencing in September 1963 in the desegregation of the schools of Macon County, Alabama, through the use of the Alabama School Placement Law,^{1/} without discrimination on the basis of race or color.

The records in this case reflect that, acting pursuant to the orders of this Court, the Macon County Board of Education assigned 12 Negro students to attend the Tuskegee Public High School in Tuskegee, Macon County, Alabama; that said students, pursuant to said assignment, attended the Tuskegee Public

^{1/} Act 201, Regular Session 1955, as amended by Act 367, Regular Session 1957, codified in Title 52, Chapter 4A, 1940 Code of Alabama.

High School in Tuskegee, Macon County, Alabama, until January 31, 1964; the record in this case further reflects that, within a few days subsequent to the opening of the school year in September 1963, with the permission of the Macon County Board of Education, all white students attending the Tuskegee High School withdrew from said school and that, since the withdrawal of said white students, the Tuskegee High School has been operated with only 12 students, all of whom are Negroes.

The record in this case further reflects that a large number of these white students whom the Macon County Board of Education permitted to withdraw from Tuskegee High School were, by authority of said Board of Education, allowed to transfer to Macon County High School at Notasulga, Alabama, and to the Shorter High School at Shorter, Alabama, both of said schools being an integral part of the public school system of Macon County, Alabama.

It now appears to this Court by the amended and supplemental complaint of the plaintiffs filed herein on this date, joined in by the United States of America, that on January 30, 1964, the Alabama State Board of Education, comprised of Governor George C. Wallace as President, Austin R. Meadows as Secretary and Executive Officer, Fred L. Merrell, W. M. Beck, Victor P. Poole, W. C. Davis, Cecil Word, James D. Nettles, J. T. Albritton, J. P. Faulk, Jr., and Harold C. Martin, as Members, ordered the Tuskegee High School closed for all grades above the seventh grade and further ordered that all teachers be transferred from the Tuskegee High School to other schools in the Macon County school system; said State Board of Education further ordered that the Negro students enrolled at Tuskegee High School be transferred to other schools in the Tuskegee area and further ordered the Macon County Board of Education to provide school bus transportation to the white children residing in the Tuskegee area who, by reason of the transfers heretofore mentioned, attend the high schools in the Macon County School system at Notasulga and Shorter.

It appears, therefore, that the State Board of Education, acting through the individuals above named, has closed the Tuskegee High School for "economic reasons." This Court will not restrain the closing of said school since it is quite apparent that it is not economically feasible to continue

its operation. It is necessary, however, that the 12 Negro students heretofore admitted to the Tuskegee High School by the Macon County Board of Education acting pursuant to the orders of this Court, be transferred to some other high school or schools in the Macon County school system and that said transfers be allowed according to the same standards heretofore applied in the case of white students.

It further appears in this case that Anthony T. Lee, Robert Judkins, Jr., Willie B. Wyatt, Jr., Patricia Jones, Marsha Sullins, Shelby Chambliss, Heloise Billes, Carmen Judkins, Janice Carter, Ellen Henderson, Harvey Jackson and Wilmar Jones, the 12 Negro students who must be transferred, have applied to the Macon County Board of Education to be transferred to the Macon County High School at Notasulga and to the Shorter High School at Shorter. Specifically, the following students have applied to be transferred to the Macon County High School at Notasulga:

Anthony T. Lee,
Robert Judkins, Jr.,
Willie B. Wyatt, Jr.,
Patricia Jones,
Marsha Sullins,
Shelby Chambliss.

The following students have applied to be transferred to the Shorter High School:

Heloise Billes,
Carmen Judkins,
Janice Carter,
Ellen Henderson,
Harvey Jackson,
Wilmar Jones.

No action has been taken by the Macon County Board of Education on any of these applications for transfer.

There is now presented to this Court the plaintiffs' application for a temporary restraining order enjoining the Macon County Board of Education from refusing to accept and approve these applications for transfer and enjoining the Macon County Board of Education from refusing to enroll and permitting the attendance of the aforesaid Negro children at the Macon County High School at Notasulga and the Shorter High School at Shorter. The United States of America joins in this application. The Macon County Board of Education, by and through its attorneys, the Honorable Richmond M. Flowers, Attorney General of the State of Alabama, and the Honorable Gordon Madison,

Assistant Attorney General, State of Alabama, being present at the time of the filing of the said application for a temporary restraining order have been afforded an opportunity to be heard on the factual and legal issues now presented.

It appears that this proceeding is ancillary to the original suit and, for this reason, this Court has the authority and duty to proceed in this case not only as to the original defendants but also as to other officials of the State of Alabama, including specifically, the Alabama State Board of Education, Governor George C. Wallace, President, Austin R. Meadows, Secretary and Executive Officer, Fred L. Merrell, W. M. Beck, Victor P. Poole, W. C. Davis, Cecil Word, James D. Nettles, J. T. Albritton, J. P. Faulk, Jr., and Harold C. Martin. See Meredith v. Fair, et al., 5th Cir., Oct. 1962, No. 19475, _____ F. 2d _____; and Franklin v. Parker as Dean, etc., M.D. Ala., C.A. 621-E, Jan. 3, 1964, _____ F. Supp. _____.

It appears that the plaintiffs and the United States of America are entitled to the relief they seek upon the showing as made in the application for a temporary restraining order and the record in this case, against the Macon County Board of Education and the individual members thereof and against the Alabama State Board of Education and the individual members thereof. It further appears that the 12 Negro students by reason of the action of the Alabama State Board of Education taken on January 30, 1964, have been deprived of their right to continued attendance at the school to which they were assigned by the County Board of Education, and it further appears that these Negro students will suffer irreparable injury if they are not provided by the Macon County Board of Education with the other available facilities of the Macon County school system without discrimination on the basis of race or color; said irreparable injury, it appears, will be by depriving them of their rights under the Constitution of the United States and the loss of their benefits under the prior orders of this Court as heretofore made and entered.

NOW, THEREFORE, in consideration of the foregoing and for good cause, it is the ORDER, JUDGMENT and DECREE of this Court that the Alabama State Board of Education and Governor George C. Wallace, as its President, Austin R. Meadows as its Secretary and Executive Officer, Fred L. Merrell,

W. M. Beck, Victor P. Poole, W. C. Davis, Cecil Word, James D. Nettles, J. T. Albritton, J. P. Faulk, Jr., and Harold C. Martin, as Members, be and each is hereby made party defendant in this cause.

It is the further ORDER, JUDGMENT and DECREE of this Court that the Alabama State Board of Education and the individual members thereof as hereinabove named, their agents, servants, employees, successors in office and those acting, or who may act, in concert with them and who shall receive notice of this order, be and each is hereby restrained and enjoined from:

(1) Preventing, or attempting to prevent, obstructing or interfering with the Macon County Board of Education and the individual members thereof in approving the transfer, the actual transfer, the enrollment and continued attendance of six Negro students at the Macon County High School at Notasulga and six Negro students at the Shorter High School at Shorter;

(2) Preventing or interfering with the students, teachers, or other persons authorized by the Macon County Board of Education, from entering or leaving the Macon County High School at Notasulga and the Shorter High School at Shorter;

(3) Harassing or punishing any students, teachers, or other authorized persons from entering or attending the Macon County High School at Notasulga and the Shorter High School at Shorter;

(4) Preventing, obstructing or attempting to obstruct the transfer, attendance and transporting of the 12 Negro students to the Macon County High School at Notasulga and the Shorter High School at Shorter.

It is the further ORDER, JUDGMENT and DECREE of this Court that the Macon County Board of Education and the individual members thereof as hereinabove named, their agents, servants, employees, successors in office, and those acting or who may act in concert with them and who shall receive notice of this order, be and each is hereby restrained and enjoined from:

(1) Refusing to approve the transfer to and attendance at Macon County High School at Notasulga of Anthony T. Lee, Jr., Robert Judkins, Jr., Willie B. Wyatt, Patricia Jones, Marsha Sullins, and Shirley Chambliss, and the transfer to and attendance at Shorter High School, Shorter, Alabama, of Heloise Billes, Carmen Judkins, Janice Carter, Ellen Henderson, Harvey Jackson and Wilmar Jones; said transfer and attendance of said students to

said schools to commence not later than Wednesday, February 5, 1964; said transfer and attendance of said students to said schools to be upon the same terms and conditions allowed and extended to the white students heretofore transferred from Tuskegee High School at Tuskegee, Alabama, to the Macon County High School at Notasulga, Alabama, and the Shorter High School at Shorter, Alabama.

(2) Failing and refusing to transport the said 12 Negro students to the high schools of the Macon County School system at Notasulga, Alabama, and Shorter, Alabama, commencing on Wednesday, February 5, 1964, upon the same terms and conditions as allowed and extended to the white students now being transported from the Tuskegee area to the said high schools at Notasulga and Shorter, Alabama.

It is further ORDERED that jurisdiction in this cause be and the same is hereby retained for all purposes; further, that the hearing on plaintiffs' motion for a preliminary injunction as hereinafter ordered will concern only those aspects of this case that are included in this temporary restraining order. This Court specifically leaves for a later hearing the other relief sought by the motion for a preliminary injunction-- particularly that part of the complaint and motion seeking the desegregation of all of the public schools and public school systems in the State of Alabama upon the theory that the Alabama State Board of Education, acting through its President, Governor George C. Wallace, and the individual members thereof as aforementioned, is presently exercising control and supervision over the entire public school system in the State of Alabama.

It is further ORDERED that the defendants appear before this Court in Opelika, Alabama, on the 13th day of February, 1964, at 10 a.m., to show cause, if any there be, why a preliminary injunction should not be issued as prayed for in the motion of the plaintiffs and the United States of America.

Done, this the 3rd day of February, 1964.

FRANK M. JOHNSON, JR.
UNITED STATES DISTRICT JUDGE