

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

FILED

SEP 22 1966

R. C. DOBSON, CLERK

By DOB Deputy Clerk

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,

Plaintiff and
Amicus Curiae,

vs.

MACON COUNTY BOARD OF EDUCATION, MADISON
DAVIS, Chairman; JOHN M. DAVIS, B. O.
DUKES, F. E. GUTHRIE, and FRANCES (MRS. J. R.)
RUSH, 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.

CIVIL ACTION
NO. 604-E

MOTION FOR AN ORDER TO SHOW CAUSE
OR, IN THE ALTERNATIVE, FOR FURTHER RELIEF

Plaintiffs pray that this Court enter an order directing defendant George C. Wallace to show cause why he should not be adjudged in civil contempt of this Court's injunction of July 13, 1964, and further pray that, after hearing, this Court adjudge defendant George C. Wallace to be in civil contempt of this Court's injunction of July 13, 1964, or, in the alternative, plaintiffs pray for further injunctive relief, in support whereof plaintiffs show unto the Court as follows:

1. On July 13, 1964, this Court enjoined defendant George C. Wallace and others from, inter alia:

(4) Interfering with, preventing or obstructing by any means, the elimination of racial discrimination by local school officials in any school district in the State of Alabama;

* * *

(6) Failing, in the exercise of its control and supervision over the public schools of the State, to use such control and supervision in such a manner as to promote and encourage the elimination of racial discrimination in the public schools, rather than to prevent and discourage the elimination of such discrimination.

2. This Court at that time refused to order defendants George C. Wallace, the State Superintendent of Education and the State Board of Education to accomplish and effectuate desegregation of all the public schools of Alabama, saying:

[At this particular time, this Court will not order desegregation in all the public schools of the State of Alabama. For the present time, this Court will proceed upon the assumption that the Governor, the State Superintendent of Education, and the State Board of Education will comply in good faith with the injunction of this Court prohibiting such interference with the local city and county school boards, and, through the exercise of considerable judicial restraint, no statewide desegregation will be ordered at this time. This Court will, however, retain jurisdiction of this and the other matters now presented in this case, and if such interference on the part of the Governor, the State Superintendent

of Education, and the State Board of Education continues or occurs in the future--either directly or indirectly--through the use of subtle coercion or outright interference when the local school authorities are attempting to comply with the desegregation orders of a Federal court, it will be appropriate for the Court to reappraise that aspect of this case. (231 F.Supp. at 756). (Court's emphasis.)

3. Since July 13, 1964, defendant George C. Wallace has committed certain acts in contempt of this Court's injunction as set forth in paragraph 1 above. These acts, recited in paragraph 4 below, have been committed with the sole purpose and effect of interfering with, preventing and obstructing the elimination of racial discrimination by local public school officials of the State of Alabama. By these acts, defendant George C. Wallace has used his influence, control, and supervision over the public schools of the State of Alabama in such a manner as to prevent and discourage the elimination of racial discrimination therein.

4. A. Prior to September 2, 1966, defendant George C. Wallace caused to be introduced into, and enacted by, the Legislature of Alabama, a bill whose sole purpose and effect is to prevent and obstruct elimination of racial discrimination within the public schools of Alabama by local public school officials of the State of Alabama. This bill, styled H.446, a copy of which is appended hereto, was enacted with the sole purpose and effect of nullifying school desegregation efforts by local public school officials pursuant to Title VI of the Civil Rights Act of 1964 and regulations promulgated thereunder by the United States Department of Health, Education and Welfare. In relevant part, this Act provides:

Section 1.

....
Any agreement or assurance of compliance with the guidelines heretofore made or given

by a local county or city Board of Education is null and void and shall have no binding effect.

Pursuant to Section 5 of the Act, defendant Wallace appointed a Governor's Commission to assist him in the enforcement of the Act.

B. Prior and subsequent to September 2, 1966, defendant George C. Wallace issued official statements designed to prevent and discourage the elimination of racial discrimination by local public school officials, including threats to use the state police power against local school boards who had achieved, or were in the process of achieving, faculty and student desegregation if Negro teachers and students were not returned to all-Negro schools.

C. Since July 13, 1964, defendants George C. Wallace, the State Superintendent of Education and the State Board of Education have continued to ignore their affirmative duty to exercise their control and supervision over local school boards to effectuate elimination of racial discrimination in the public schools of Alabama, disregarding this Court's admonition "that in the exercise of their general control and supervision over all the public schools in the State of Alabama and particularly in the allocation and distribution of State funds for school operations, they have an affirmative duty to proceed with 'deliberate speed' in bringing about the elimination of racial discrimination in the public schools of this State." (231 F.Supp. at 756),

This Court had specifically warned these defendants:

Needless to say, it is only a question of time until such illegal and unconstitutional support of segregated school systems must cease. These State officials and the local school officials are now put on notice that within a reasonable time this Court will expect and require such support to cease. These school officials should now proceed to formulate and place into effect plans designed to make the distribution

of public funds to the various schools throughout the State of Alabama only to those schools and school systems that have proceeded with "deliberate speed" in the desegregation of their schools and school systems as required by Brown v. Board of Education, supra. (231 F.Supp. at 756-57).

Notwithstanding this Court's admonition:

(1) Defendants have failed or refused to formulate plans for discontinuance of financial support of school systems not complying with Brown v. Board of Education, 349 U.S. 294.

(2) Defendants have failed to take any affirmative steps in connection with their allocation and distribution of state funds for school operations to bring about the elimination of racial discrimination in the public schools of the State of Alabama.

(3) Defendants have, instead, offered state funds to local school systems to prevent and obstruct the elimination of racial discrimination pursuant to the Fourteenth Amendment to the Constitution of the United States and Title VI of the Civil Rights Act of 1964 and the regulations promulgated thereunder.

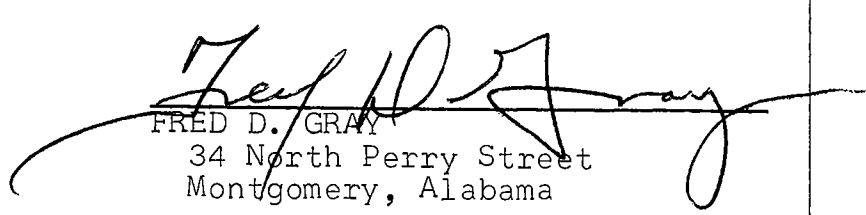
WHEREFORE, for the foregoing reasons, plaintiffs pray that this Court enter an order directing defendant George C. Wallace to show cause why he should not be adjudged in civil contempt of this Court's injunction of July 13, 1964, and further pray that, after hearing, this Court so adjudge defendant Wallace or, in the alternative, enter a further injunctive order against him, requiring him in either event to perform certain remedial acts, including, but not limited to, the following:

1. Defendant George C. Wallace should be restrained from in any way enforcing H.446 and should be required to undo any acts performed pursuant to that statute, including the appointment of the Governor's Commission as provided for in Section 5 thereof.

2. Defendant George C. Wallace should be required to exercise his control and supervision over the public schools of the State of Alabama in such a manner as to promote and encourage the elimination of racial discrimination in the public schools of the State of Alabama. Specifically, defendant Wallace should be required to cease his interference with desegregation attempts by local public school officials and should be required to use his power over local schools to promote and encourage their desegregation. Defendant Wallace should be required to make periodic reports to the Court reciting his efforts to promote and encourage public school desegregation in Alabama and the results of his efforts.

3. As part of Plaintiff's Motion for Further Relief only, defendants George C. Wallace, the State Superintendent of Education and the State Board of Education, their agents, servants, employees, successors in office and all those in active concert or participation with them should be required to accomplish and effectuate total desegregation of all the public schools of the State of Alabama by any and all possible means, including the withdrawal of state funds from school districts which have not taken or are not now taking affirmative steps to effectively desegregate their schools.

Respectfully submitted,



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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Fred D. Gray, hereby certify that on the 22nd day of September, 1966, I served copies of the foregoing plaintiffs' Motion for an Order to Show Cause or, in the Alternative, for Further Relief, upon each of the attorneys of record for defendants, by United States mail, postage prepaid, by depositing the same in a United States postal box in Montgomery, Alabama, to the named persons and addresses listed below:

Honorable Richmond M. Flowers
Attorney General
State of Alabama
Montgomery, Alabama

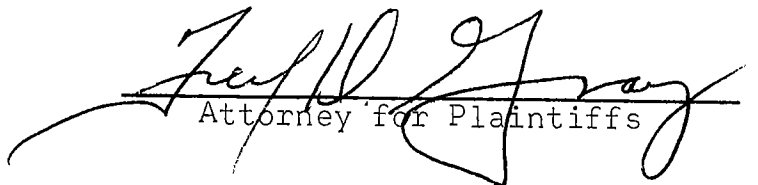
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