

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

FILED

SEP 5 1967

ANTHONY T. LEE, ET AL.,)
Plaintiffs,)
UNITED STATES OF AMERICA,)
Plaintiff-Intervenor)
and Amicus Curiae,)
vs.)
MACON COUNTY BOARD OF)
EDUCATION, ET AL.,)
Defendants.)

R. C. DOBSON, CLERK
By: *RCD*
Deputy Clerk

CIVIL ACTION NO. 604-E

TEMPORARY RESTRAINING ORDER

This cause is now submitted upon the motion of the plaintiffs filed herein on September 2, 1967, seeking a temporary restraining order restraining and enjoining the defendants and each of them, their servants, agents, employees and all persons in active concert and participation with them, from enforcing the provisions of Act No. 266 and Act No. 285 of the State of Alabama.

Upon consideration of the motion for the temporary restraining order and plaintiffs' motion for further relief, also filed on September 2, 1967, it appears that Act No. 285 requires "all students, acting through their parent or guardian . . . to exercise a choice . . . of the race of the teacher desired," and in the implementation of said Act prescribed choice forms for such a purpose are to be executed prior to the beginning of the 1967-68 school year which commences September 7, 1967. Further, Act No. 285 authorizes the Governor of the State of Alabama to "take such steps as are necessary to see that no state funds are made available" to local school boards that do not require their students to choose the race of their teachers," and to "take such administrative action as is deemed necessary to accomplish the requirements of this Act."

The order and decree of this Court made and entered in this case on March 22, 1967, provides, among other things:

"Race or color will not be a factor in the hiring, assignment, reassignment, promotion, demotion and dismissal of teachers . . . except that race will be taken into account for the purpose of correcting the effect of past segregated assignment of teachers in the dual [school] system."

Act No. 266, referred to in plaintiffs' motion for additional relief as "the tuition grant bill," requires the Governor of the State of Alabama

to appoint three persons to the Alabama Financial Assistance Commission, which Commission is established by the Act to administer the tuition grants. Plaintiffs contend that the tuition grant bill is another effort on the part of the State of Alabama to resist the requirements of the law as to the abolition of Alabama's dual public school system based upon race or color.

It clearly appears from plaintiffs' motion for a temporary restraining order and the accompanying motion for further relief, that Act No. 285, concerning the exercise of a choice of teacher desired by the students attending the public schools in Alabama, if unconstitutional and if the effect of said Act would frustrate the implementation of this Court's order of March 22, 1967, the plaintiffs will suffer immediate and irreparable injury and damage. For this reason, it is considered appropriate and necessary to temporarily restrain the defendants and each of them, their servants, agents, employees and all persons in active concert and participation with them, from enforcing the provisions of Act No. 285 of the State of Alabama until further order of this Court.

It does not appear from plaintiffs' motion and application for further relief that immediate and irreparable injury and damage will result if the implementation of Act No. 266 of the State of Alabama is not temporarily restrained and enjoined. Therefore, no temporary restraining order will be issued at this time as to Act No. 266 of the State of Alabama.

Accordingly, it is the ORDER, JUDGMENT and DECREE of this Court that the defendants and each of them, their servants, agents, employees, and all persons in active concert and participation with them, be and each is hereby temporarily enjoined and restrained from enforcing or taking any steps to implement, or otherwise putting into effect, the provisions of said Act No. 285 of the State of Alabama until further order of this Court.

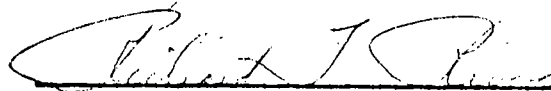
It is further ORDERED that the defendant Ernest Stone, Secretary and Executive Officer of the Alabama State Board of Education, immediately notify the superintendent of each of the school systems named in the order of this Court made and entered in this case on March 22, 1967, as to the issuance of this temporary restraining order as to Act No. 285 of the State of Alabama.

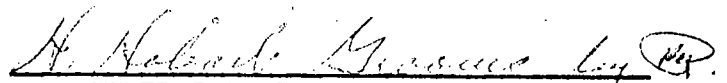
It is further ORDERED that the United States Marshal for this district serve, or cause to be served, a copy of this temporary restraining order upon each of the defendants in this case and that the Clerk of this Court serve by certified mail a copy of this order upon the superintendent of each school system

named in the order of this Court made and entered herein on March 22, 1967.

It is further ORDERED that plaintiffs' motion for a preliminary injunction enjoining and restraining the defendants from enforcing the provisions of Act No. 285 and Act No. 266 of the State of Alabama, and the motion of the United States filed herein on September 4, 1967, seeking leave to file a supplemental complaint and asking this Court to issue a preliminary injunction against the enforcement of Act No. 285 of the State of Alabama, be and each is hereby set for a hearing to commence at 9:30 a.m., September 16, 1967, in the United States District Courtroom, Montgomery, Alabama. Pursuant to Section 2284 of Title 28, United States Code, the Clerk of this Court is DIRECTED to give notice of said hearing to the Governor of Alabama and to the Attorney General of Alabama by certified mail, including a copy of this order.

Done, this the 5th day of September, 1967.


UNITED STATES CIRCUIT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE