R. Ortenberg

IN THE UNITED STATES DISTRICT COURT FOR THE

MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

ALABAMA NAACP STATE CONFERENCE OF BRANCHES, et al.,	)	
Plaintiffs,	)	
v.	)	CIVIL ACTION NO. 2457-N
GEORGE C. WALLACE, Governor of the State of Alabama, et al.,	)	
Defendants.	)	

REPLY BRIEF OF UNITED STATES

As we understand the principal argument of the defendants, it rests on three premises:

1. The Fourteenth Amendment and the Civil Rights Act of 1964 forbid compelled racial segregation in the public schools -- and nothing more.

2. Where schools have been segregated, corrective action, whether judicial or administrative, should do no more than eliminate compulsory segregation.

3. The HEW Guidelines require the wholesale mixing of students to achieve racial balance.

As to the first and second premises, we believe that the defendants' brief misconstrues the nature of their obligation under Brown and under the Civil Rights Act of 1964. Their obligation is not simply to desist from compelling segregation based upon race, but is to eliminate all aspects of racial discrimination that inhere in a racially-dual school system.

As to the third premise, the defendants misstate the purpose and effect of the Guidelines. The requirements of the Guidelines, both on their face and as implemented, relate directly to achieving compliance with the mandate of the Brown decision and of Title VI and are not directed to achieving racial balance.

A. The requirements of Brown and of Title VI.

We accept the unspoken premise underlying the argument of the defendants that the "discrimination" that is forbidden by Title VI of the Civil Rights Act of 1964 is essentially the same "discrimination" which the Supreme Court has held to be contrary to the strictures of the Fourteenth Amendment.

In its first Brown decision, the Supreme Court held that "Separate educational facilities are inherently unequal." Brown v. Board of Education, 347 U.S. 483, 495 (1954). In second Brown, the Court recognized that in school systems structured on the basis of racial segregation a period of transition would be necessary to eliminate all aspects and vestiges of the dual system. In determining the length of the transitional period, the district courts were to be permitted to "consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to public schools on a non-racial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems." Brown v. Board of Education, 349 U.S. 294, 300-301 (1955).

In Brown, as in most of the early school desegregation cases, the Court was considering school systems that totally compelled segregation of the races. It was, therefore, natural that the language of the courts dealt with "compulsory segregation." Thus, the Court of Appeals for the Fifth Circuit, as pointed out by the defendants in their brief, frequently alluded to the fact that the decisions "forbid governmentally enforced segregation" but do not "command integration." See Avery v. Wichita Falls Independent School District, 241 F. 2d 230, 233 (C.A. 5, 1957); Rippy v. Borders, 250 F. 2d 690, 692 (C.A. 5, 1957); Cohen v. Public Housing Administration, 257 F. 2d 73, 78 (C.A. 5, 1958); Evers v. Jackson Municipal Separate School District, 328 F. 2d 408 (C.A. 5, 1964).

While they forbid compelled racial segregation in the public schools, Brown and the succeeding cases unquestionably do more. They forbid any discrimination against a student because of his race. With respect to public education, as with respect to any other governmental activity, Negroes have "the right to stand equal before the laws of the State; that is, to be treated simply as individuals without regard to race or color." Boson v. Rippy, 285 F. 2d 43, 46 (C.A. 5, 1960).

The Court of Appeals for the Fifth Circuit early recognized that the mere existence of a statutory scheme permitting the assignment of students to schools on a non-racial basis did not discharge a state's obligation to "desegregate" an already established dual system of schools based on race. Gibson v. Board of Public

Instruction of Dade County, 272 F. 2d 763 (C.A. 5, 1959). Later, the same Court held that even affirmative steps implementing a free transfer system did not meet constitutional requirements where the underlying system of initial assignments based upon dual racial zones had not been abolished. Augustus v. Board of Public Instruction of Escambia County, 306 F. 2d 862 (C.A. 5, 1962). See also, Bush v. Orleans Parish School Board, 308 F. 2d 491 (C.A. 5, 1962).

In yet other cases, the Court of Appeals for the Fifth Circuit has recognized that a "free choice" is not a cure-all for other elements of discrimination in a school system. Thus, even before the Supreme Court rendered its decision in Goss v. Board of Education of Knoxville, 373 U.S. 683 (1963), the Court of Appeals held, in a suit brought by Negro plaintiffs, that a school board policy permitting white students to transfer from a school in which they were in a racial minority to one in which their race was a majority violated constitutional standards where the policy might "tend to perpetuate racial discrimination." Boson v. Rippy, supra, at 46.

Just as the Court of Appeals in Boson v. Rippy, supra, anticipated the ruling of the Supreme Court in Goss regarding the minority transfer rule, so also did the Court of Appeals in Board of Public Instruction of Duval County v. Braxton, 326 F. 2d 616 (C.A. 5, 1964), anticipate the ruling of the Supreme Court regarding faculty segregation. In Bradley v. School Board of Richmond, 382 U.S. 103 (1965) and Rogers v. Paul, 382 U.S. 198, (1965) the Supreme Court held that the racial segregation of faculty has sufficient bearing upon the right of the Negro student to a non-racial education, that the student has legal standing to seek injunctive relief against continuation of the practice.

Under the above decisions, the test of constitutionality is not simply whether Negroes are compelled to attend schools attended solely by members of their own race. The test is whether the state is using or has used racial distinctions in the operation of the public schools in such a manner that the Negro students do not, in the language of Boson, "stand equal before the laws of the state." In short, the question here is not whether Negroes in Alabama are being compelled by the defendants to attend all-Negro schools, but whether the defendants have participated and are participating in the planning or maintenance of schools, transportation, or other educational services for Negroes in such a way as to denote their inferiority or to deprive them of an equal educational opportunity.

The language of the Fifth Circuit Court of Appeals in a somewhat similar situation is pertinent. In rejecting a contention that it was constitutionally permissible for the Railroad Terminal station in Birmingham to maintain separate waiting rooms for white and Negro passengers, so long as segregated use of those waiting rooms was not enforced, the Court said:

> What is forbidden is the state action in which color (i.e., race) is the determinant. It is simply beyond the constitutional competence of the state to command that any facility either shall be labeled as or reserved for the exclusive or preferred use of one rather than the other of the races.
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> This is not to say that integration in all activities must be governmentally compelled. We, and others, have clearly indicated to the contrary. City of Montgomery, Alabama v. Gilmore, 5 Cir., 1960, 277 F. 2d 364, at page 369 and notes 5 and 6. But the State may not either compel segregation in use or the maintenance or making of separate facilities where the criteria is race or color. Baldwin v. Morgan, 287 F. 2d 750, 754 (C.A. 5, 1961).

Similarly, the State of Alabama may not constitutionally plan, locate or maintain schools for Negroes <u>as Negroes</u> - except, as we shall hereinafter discuss, to correct the effects of the existing dual system.

B. <u>Corrective Action</u>

The brief of the defendants fails to distinguish between an obligation to discontinue an unconstitutional practice carried on in good faith under the doctrine of <u>Plessy</u> v. <u>Ferguson,</u> 163 U.S. 537 (1896), and the obligation to take affirmative steps to disestablish an unconstitutional system that has been preserved and maintained on a statewide basis for twelve years in open and deliberate violation of federal law. This distinction, we believe, is vital in this case.

Even where there has been good faith, the disestablishment of an existing dual system may require more than the passive discontinuance of discriminatory action.

In one sense, the officials of a segregated school system cease their discriminatory practices when they commence assigning all new students and newly-employed teachers to particular schools without regard to race.

Such officials can say that they are doing as much, and should be required to do no more, than are similar officials in school districts that have never had a racially segregated system. Clearly, however, this would not be sufficient either in logic, in fairness, or under the decisions of the Court of Appeals for the Fifth Circuit and of the Supreme Court. Assignments of teachers and students already made would continue unless affirmative steps were taken to undo them. Depending on the facts of the particular case, the same might be true as to bus routes, athletic schedules, and the location of school sites and facilities. The official decisions in these areas, having been racially oriented in the past, have an effect that will continue unless corrected. And corrective action may well require that some consideration be given to race.

The necessity of considering race in correcting racial discrimination and its effects has been recognized by the Court of Appeals for this Circuit.

In a recent decision, the Court of Appeals looked to race in determining how effective the free choice plan of the Mobile, Alabama, school system had been in effecting desegregation. Davis v. Board of School Commissioners of Mobile, Alabama, 364 F. 2d 896 (C.A. 5, 1966).

In noting the factors that led it to conclude that the free choice plan was not operating effectively to eliminate the maintenance of separate schools upon the basis of race, the Court said:

> Principal among these is the fact that even as to those grades which, under the plan, have actually become "desegregated", there is no true substance in the alleged desegregation. Less than two-tenths of one percent of the Negro children in the system are attending white schools.
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> 364 F. 2d 896, at 901

Not only may a school board, and perforce a district court, look to race in determining whether the dual system of schools is being effectively eliminated, but racial considerations may also be employed in correcting the dual system. In Wanner v. County School Board of Arlington County, Virginia, 357 F. 2d 452, the lower court had enjoined school authorities from closing a traditionally all-Negro high school and transfering the Negro students to traditionally white high schools upon the ground that their action was based upon racial considerations. The Court of Appeals for the Fourth Circuit, in reversing, said:

> It would be stultifying to hold that a board may not move to undo arrangements artificially contrived to effect or maintain segregation, on the ground that this interference with the status quo would involve "consideration of race." When school authorities, recognizing

> the historic fact that existing conditions are based on a design to segregate the races, act to undo these illegal conditions - especially conditions that have been judicially condemned - their effort is not to be frustrated on the ground that race is not a permissible consideration. This is not the "consideration of race" which the Constitution discountenances.
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> 357 F. 2d, at 454

In the recently decided case of Board of Education of the Oklahoma City Public Schools v. Dowell, ____ F. 2d ____ (C.A. 10, No. 8523, decided January 23, 1967), the Court of Appeals for the Tenth Circuit was urged to reverse the decision of District Judge Bohannon in Dowell v. Board of Education of the Oklahoma City Public Schools, 244 F. Supp. 971 (W.D. Okla., 1965), requiring school authorities to permit students to transfer from schools in which their race was in the majority to schools in which their race was in the minority, and requiring the consolidation of certain traditionally all-Negro schools with certain traditionally all-white schools under the so-called "Princeton Plan." The Court of Appeals, in affirming the District Court order in these particulars, held that it was appropriate to require the school authorities to give affect to racial factors in order to overcome the effects of the past discriminatory system. In response to the argument that such action compelled integration rather than merely requiring desegregation, Circuit Judge Lewis, concurring specially, said:

> I have no quarrel with the statement that forced integration when viewed as an end in itself is not a compulsion of the Fourteenth Amendment. But any claimed right to disassociation in the public schools must fail and fall. If desegregation of the races is to be accomplished in the public schools, forced association must result, not as the end sought but as the path to elimination of discrimination. And, to me, the argument that racial discrimination cannot be eliminated through factors of judicial consideration that are based upon race itself is completely self-denying. The problem arose through consideration of race; it may now be approached through similar but enlightened consideration.
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> Again noting that the case reaches us for review of the affirmative action of the trial court it seems proper to emphasize that we do not set out consolidation of schools and the majority-to-minority transfer policy as compulsive instruments to accomplish desegregation. But we do hold that such means are not violative of the constitutional rights of any and might properly have been utilized by the School Board, and, in its stead, were available to the trial court. The contrasting policy of minority-to-majority transfer, denied in Goss, perpetuated discrimination; here, a start is made toward full compliance with Brown.

The factor of race can no more be ignored in abolishing the dual system in Alabama than in Oklahoma. The real objection of the defendants, however, as we see it, is not to considering the race of the students and teachers during the disestablishment of the dual system; their objection is to being required to take any affirmative steps whatever to disestablish that system. Yet, this Court has already, in its order of July 13, 1964, enjoined the defendant state officials from:

> 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.

Despite this order, the defendants by their own admission have done nothing to disestablish the dual system in Alabama. They continue to plan, propose and approve school construction upon the basis of the race of the students intended to be served; they still establish and fix attendance areas for junior colleges and trade schools upon the basis of race; they still subsidize and encourage the operation of local school transportation systems on a racial basis, and they officially discourage the desegregation of teaching staffs.

C. The Guidelines Do Not Require Racial Balance

In their attempt to discredit the Guidelines the defendants say the Guidelines require the establishment of racial balance. We have already pointed out in our previous brief that such an interpretation does violence to the language of the Guidelines. The defendants now attempt to make their point by referring to the administrative practice. Pages 33 through 42 of the defendants' brief purport to set forth interpretations of the Guidelines by the Commissioner of Education. These interpretations need not be discussed, except to point out that they are the defendants' interpretations and not the Commissioner's. The depositions of both Mr. Howe and Mr. Crowder, for example, explicitly deny any plan or attempt to establish racial balance or proportions as a requirement for receiving federal funds1/ and the following illustration from the bottom of page 34 of defendants' brief is noted to show that the import of the testimony is not always clearly stated:

> Mr. Howe testified ... that if such transfers of both students and faculty, or either, were not attained [that would be one element in a

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1/ See Howe Dep., pp. 66, 67, 77-79, and Crowder Dep., pp. 27, 33.

decision][2/] (a) to defer federal funds, and (b) to set up a hearing leading to the termination of federal funds.

Also, on pages 41 and 42 there is a list of 15 actions which defendants state the United States Commissioner of Education will compel local school officials to take in order to promote integration, although Mr. Howe in his testimony emphatically denied any such intention.

D. The Further Contentions of the Defendants Are Without Merit.

The defendants reiterate in Part VI of their brief their contention that the guidelines conflict with certain limiting provisions of Titles IV, VI, and VII of the Civil Rights Act of 1964. The contentions regarding Title IV and VI were dealt with in the Government's main brief in this case, at pp. 20-28 and also in the Court's opinion in United States v. Jefferson County Board of Education, C. A. 5, No. 23345 (decided December 29, 1966).

Regarding Title VII, the defendants appear to argue that the exclusion of state employment from coverage under the fair employment provisions of the Civil Rights Act bars the Commissioner from requiring faculty desegregation in his enforcement of Title VI. The argument must

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2 / The bracketed testimony from the deposition was omitted and "he would take steps" was inserted in defendants summary of the testimony.

fail for the same reason that the contention regarding section 604 of the Act must fail (see Brief of the United States at 20-23) - i.e., faculty segregation is not so much an employment practice as it is a device for perpetuating the segregation of students in violation of the Fourteenth Amendment and section 601.

The defendants argue further in Parts VIA, and VII of their brief that the guidelines are contrary to section 604 of the Elementary and Secondary Education Act, 20 USC §884, which declares that nothing contained in that Act shall be construed to authorize federal control over the curriculum, program of instruction, administration, personnel of any school. First, it is difficult to understand why a limitation specifically applicable to one statute should be read as a limitation on action taken pursuant to an entirely different statute. Second, except insofar as racial factors are involved the guidelines do not touch upon any of the areas barred to the Commissioner by §604 of the Elementary and Secondary Education Act. Lastly, the entire enforcement scheme of Title VI necessarily generates federal scrutiny of all practices which conflict with the Fourteenth Amendment and are now routinely dealt with in Court orders. In that sense the "federal involvement" derives from the Constitution and not an Act of Congress or executive administration. Indeed, if §604 of the Education Act is read so as to immunize such factors as faculty segregation, initial racial assignment of students and racially oriented transportation from federal scrutiny prior to the granting of federal funds, that immunity itself would be of doubtful constitutionality. Cf. Simkins v. Moses H. Cone Hospital, 323 F.2d 959 (C.A. 4, 1963).[3/]

Although they argue that the guidelines are not "law" and are akin to revenue rulings of the Internal Revenue Service, the defendants assert that they are invalid because the President did not formally approve them. We treated this question in our main brief (see Brief of the United States at 6-8), but we note in addition that the defendants can point to no legislative history indicating that Congress expected the President, rather than the Office of Education, to determine what particular action non-complying school systems would have to take under Title VI, or that the President should review the Commissioner's determinations in that regard. What is clear is that decision of the designated rule-maker, here the Secretary of Health, Education and Welfare, to subdelegate the particular definition of standards to another

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3 / The restriction of §604 of the Elementary and Secondary Education Act is not as absolute as the defendants suggest. Under §205(a) of the Act, 20 USC §241e(a), State agency approval of local projects must be "consistent with such basic criteria as the Commissioner may establish" and the Commissioner's regulations deal with such specifics as the size and geographic reach of a project, eligibility of children for participation in a project, use of funds for school construction, and procedures for evaluating the effectiveness of individual programs. 45 CFR §§ 116.17-116.22. Thus the precise impact of §604 is to reserve to the local agencies complete autonomy from federal regulation except insofar as that regulation is authorized by the Education Act itself.

officer would have to be approved by the President. Here it was because the subdelegation is spelled out in the HEW regulation itself. See 45 CFR §80.4(c).

It is important to emphasize that each requirement of the guidelines is subject to administrative challenge by any school system on grounds of hardship, inapplicability, or invalidity as applied to it and a hearing officer in a §602 proceeding may properly determine it should not apply. The regulations are another matter; there both the hearing officer and the Secretary must apply them as controlling law in the absence of changes in the regulations. This administrative leeway in applying the guidelines, reflecting as it does their advisory nature, parallels the approach taken by the Fifth Circuit in the Jefferson County case in its adoption of the guidelines as judicial standards under the Fourteenth Amendment. Under that decision, an individual school board may show why the generally applicable standards ought not apply to it. See United States v. Jefferson County Board of Education, slip opinion at 111-112.

The defendants argue vigorously that the guidelines have no legal force of their own and are not valid if they are contrary to any statute or constitutional provision (Defendants' Brief at 43-46). We entirely agree. They are the Commissioner's view of the standards school boards must meet to obtain federal funds. To the extent that they are contrary to any Act of Congress or the HEW regulations, they should be given no effect. However, we have tried to show throughout our main brief, and again here, that no such conflict exists.

In Part VIII of their brief, the defendants challenge anew the assurance requirement of the HEW regulations and they argue that the Commissioner may not lawfully deny federal funds to an applicant who refuses to file an assurance but who nonetheless is in compliance with the guidelines or a court order.

In our main brief we sought to demonstrate the propriety of the assurance requirement (Brief of the United States at 8-12). The defendants now argue that by filing assurances local boards somehow bargain away their governmental obligations and unlawfully bind their successors in office to courses of action they should be free to avoid. But so long as boards receive federal funds, they are bound by the general nondiscrimination requirements of §601, and whether they receive federal funds or not they are bound by the Fourteenth Amendment. If the assurances simply relate to what school boards must do anyway, and we believe that is the only effect of the assurances, they operate to enforce governmental obligations rather than to vitiate them. Further, it is commonplace for public agencies to enter into obligations binding on successors. If they could not, continuity in government could not be sustained. Any future board is always free to rescind an assurance and forfeit the future receipt of funds, but insofar as particular capital improvements or continuing programs reflect on-going federal aid, successor boards cannot and ought not be able to avoid the non-discrimination commitments of their predecessors.[4]

The defendants further challenge the legality of fund termination where the recipient is in compliance with required standards but refuses to submit an assurance. The situation is implausible; if the recipient is in *bona fide* compliance, why would he refuse to file an assurance that this is and will continue to be the case? So long as the assurance is a proper technique of

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4 / There is no basis for applying the principles quoted by the defendants at pp. 61-66 of their brief to invalidate the assurance requirement of the HEW regulation. Each of the State court cases quoted by the defendants involved a contract between a public agency and a private individual in which, as payment for goods or services to be provided by the private individual, the public agency bargained away some aspect of its governing discretion. In *Gale* v. *Village of Kalamazoo*, 23 Mich. 344, the village trustees promised not to authorize the building of a public market over a ten-year period in consideration of the plaintiff's construction of a market; in *McCortle* v. *Bates*, 29 Ohio St. 419, a majority of a board of education contracted to approve a purchase at their next meeting as a board; in *Leidigh* v. *Nebraska City*, 138 Neb. 136 (1940), city officers extended the credit of the city beyond their terms of office in violation of state public policy; and in *Shores* v. *Elmore County Board of Education*, 3 S.2d 14 (Ala. Sup. Ct., 1942), the Alabama school laws were construed to prohibit the making of contracts with bus drivers which extended beyond the term of the incumbent Superintendent. Thus the cases turned on the nature of each public office as a matter of state law, and their relevance to relations between a state agency and the Federal government acting pursuant to an Act of Congress is no where made clear by the defendants.

administration, its requirement may be enforced by the agency that chooses to use it. If it is concluded that assurances ought to be filed, receipt of funds may properly be conditioned upon the meeting of that procedural requirement. There is no reason for the Commissioners to assume that an applicant who refuses to file an assurance will, in good faith, maintain a status of compliance if he refuses to assure the Commissioner that he will do just that, even if at the time of the refusal to assure he is in fact complying.5/

In Parts IX and X of their brief the defendants argue that there is no basis for entering a declaratory judgment in this case. Their position is that if the guidelines and the assurance requirement are valid, then Act No. 252 has no effect. But the issue raised in the Government's complaint is whether Act No. 252 is valid, not whether the guidelines are valid. Our pre-trial brief argued that the subject matter of Act No. 252 was beyond the competence of the Alabama legislature, whatever the partial or total invalidity of the guidelines as a matter of federal law. It now appears to be conceded by all that the question of the validity of

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5/ The defendants' further assertion that Commissioner arrogates to himself the authority to require more than the terms of court orders which are submitted in lieu of desegregation plans is without substance (Defendants' Brief at 49). There is no evidence in this case that Commissioner has ever rejected a court order as insufficient, and although a plainly inadequate order can provide no refuge from the requirements of Title VI, there is no occasion for this Court to consider in the abstract the possibility of administrative rejection of any particular order.

Act No. 252 will turn on the validity of the guidelines, but it does not follow that the guidelines question is the sole pivot upon which the Court's decision must depend.

We agree that if the guidelines are valid, Act No. 252 has no residual effect. But the issues are in litigation because they will not resolve themselves, and the vehicle for resolving them is this lawsuit to determine whether Act No. 252 conflicts and interferes with basic federal law. Act No. 252 will not disappear as a result of this Court expressing a view that the guidelines are valid. The question is whether the state and local officials beholden to the statute understand, without being told by this Court, that if the guidelines are valid Act No. 252 is a nullity. We have shown in our main brief at pp. 29-34 that Act No. 252 had a substantial impact upon school administration in Alabama. The Court should not assume that the supremacy of federal law is so well understood by school officials in Alabama that a decision limited to the issues raised only in the defendants' counterclaim regarding the validity of the guidelines would suffice to accomplish the objectives of the Government's main suit, should the Court fail to declare Act No. 252 invalid. Indeed, if Act No. 252 ought not be declared invalid even if the guidelines are sustained, the Court's jurisdiction over the Government's claim falls. Since it is doubtful whether the state-level defendants may independently raise all the issues regarding the guidelines contained in their counterclaim,[6/] a decision which validated the guidelines but which fell short of declaring Act No. 252 invalid would itself be subject to jurisdictional challenge, even if the parties agreed to this cause.

The defendants in Part X of their brief characterize Act No. 252 as dealing only with the authority of local school boards to accept federal funds. The characterization is inaccurate. The statute is addressed to the conditions that attach to the receipt of federal funds, and not to their receipt itself. Alabama may, for valid governmental reasons, reorganize its educational system so as to withdraw from local school boards the authority to receive federal funds, but it has not done so by the enactment of Act No. 252. Instead, it purports to establish what obligations the school boards undertake when they receive the funds, and, premised on a judgment regarding the legality of the guidelines, the Act restricts the obligations school officials may undertake in the future.

6/ The counterclaim challenging the guidelines was filed only in the names of the state-level defendants. The Tuscaloosa officials, who are sued here only by the private plaintiffs, have no pending claim against the United States or the private plaintiffs.

Thus the Act operates so as to interfere with the enforcement of Title VI in Alabama for no reason justifiable in terms of the state's legitimate interests. It should therefore be declared unconstitutional by this Court.[7/]

Respectfully submitted,

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7/ Shuttlesworth v. Birmingham Board of Education, 162 F. Supp. 372 (N.D. Ala., 1958), affirmed 358 U.S. 101 (1958), is no authority for validating Act No. 252. The pupil placement law there under attack was innocent so far as its precise terms were concerned, and the Court has no evidence before it regarding its administration. When that evidence became available, this Court in Lee v. Macon County Board of Education, 231 F. Supp. 743 (M.D. Ala., 1964) barred implementation of the statute to maintain segregation. In this case the challenged statute on its face raises the conflict with federal law that warrants its invalidation, and, moreover, its inhibiting effect is shown by the evidence in the case.