
**UNITED STATES
COURT of APPEALS**

FIFTH CIRCUIT

No.

UNITED STATES OF AMERICA,

APPELLANT

VERSUS

BILOXI MUNICIPAL SEPARATE
SCHOOL DISTRICT, ET AL,

APPELLEES

Appeal from the District Court of the United
States for the Southern District of Mississippi,
Southern Division

MIMEOGRAPHED RECORD

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MEMORANDUM FOR CLERK, UNITED STATES COURT OF APPEALS
APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF MISSISSIPPI, SOUTHERN DIVISION

UNITED STATES OF AMERICA,

APPELLANT

VERSUS

BILOXI MUNICIPAL SEPARATE SCHOOL
DISTRICT, ET AL, (FIRST CLAIM)

APPELLEES

ATTORNEYS FOR APPELLANT:

Honorable Burke Marshall, Assistant Attorney
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Honorable St. John Barrett, Department of
Justice, Washington, D. C.
Honorable David H. Marlin, Department of
Justice, Washington, D. C.
Honorable Robert E. Hauberg, United States
Attorney, Jackson, Mississippi

ATTORNEYS FOR APPELLEES:

Honorable Victor B. Pringle, P. O. Box 292,
Biloxi, Mississippi
Honorable Tom H. Watkins, P. O. Box 650,
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Honorable Joe T. Patterson, Attorney General,
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Jackson, Mississippi
Honorable Guy N. Rogers, Assistant Attorney General,
Jackson, Mississippi
Honorable William A. Allain, Assistant Attorney
General, Jackson, Mississippi
Honorable Peter M. Stockett, Special Assistant
Attorney General, Jackson, Mississippi

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

BILOXI MUNICIPAL SEPARATE SCHOOL
DISTRICT; J. A. GRAVES, President,
and PETER T. KULJIS, C. T. SWITZER,
RICHARD CREEL, and MRS. DUDLEY
ANDREWS, Members of the Board of
Trustees of the Biloxi Municipal
Separate School District; ROBERT D.
BROWN, Superintendent of Education
of Biloxi Municipal Separate School
District; GULFPORT MUNICIPAL
SEPARATE SCHOOL DISTRICT; JAMES S.
EATON, President, and MRS. CHARLES R.
STOREY, EARL C. GAY, A. L. GREEN
and G. M. OWEN, Members of the Board
of Trustees of Gulfport Municipal
Separate School District; and
W. L. RIGBY, Superintendent of
Education of Gulfport Municipal
Separate School District,

Defendants.

CIVIL ACTION
NO. 2843

COMPLAINT
(Filed Jan. 18, 1963)

FIRST CLAIM

The United States, as a claim against the Biloxi Municipal
Separate School District, J. A. Graves, Peter T. Kuljis, C. T.

Switzer, Richard Creel, Mrs. Dudley Andrews and Robert D. Brown, alleges:

1. This is an action to protect the interest of the United States that members and civilian employees of its Armed Forces and their dependents be not unconstitutionally discriminated against on account of race or (R-2) color in the use and enjoyment of educational facilities which have been built or are being maintained and operated with the use of funds of the United States under the provisions of P. L. 815 and P. L. 874, 81st Congress (Chapters 13 and 19 of Title 20 U. S. C.), with the resultant detriment to their service and morale.

2. This Court has jurisdiction of this action under Sections 1343 and 1345 of Title 28, United States Code.

3. The State of Mississippi maintains a statewide system of free public schools.

4. The Board of Trustees of the Biloxi Municipal Separate School District (hereafter referred to as the Biloxi Board) is vested under Mississippi law with the general administration and supervision of the public schools of the City of Biloxi. The Biloxi Board is composed of five members. Its principal office is in the City of Biloxi.

5. J. A. Graves is President of the Biloxi Board and Peter T. Kuljis, C. T. Switzer, Richard Creel and Mrs. Dudley Andrews are members of the Biloxi Board. Each resides in Biloxi, Mississippi.

6. Robert D. Brown is the Superintendent of Education of the

Biloxi Board and as such is the chief executive officer of the Biloxi Board. He resides in Handsboro, Mississippi.

7. The plaintiff maintains Keesler Air Force Base in Harrison County, Mississippi, as a part of its national defense establishment and also maintains a Veterans Administration Hospital in Harrison County, Mississippi, for the treatment of veterans of its Armed Services.

8. Keesler Air Force Base, an Air Training Command installation, is the home of the Keesler Technical Training Center and the United States Air Force Ground (R-3) Operations School. The mission of the Keesler Technical Training Center is to train military personnel and civilian employees of the Air Force and other branches of the Department of Defense in missile systems, radar and radio operations and in the use and operation of other specialized electronics equipment. The United States Air Force Ground Operations School provides instruction for officers and certain selected civilians in the concepts, doctrines, tactics, techniques and procedures by which component air and surface combat forces plan, integrate and conduct joint and combined operations. Other units stationed at Keesler Air Force Base are Detachment 22 of the 24th Weather Squadron; the 2052nd Communications Squadron, a Coast Guard Air Detachment, the Keesler Detachment of the Eastern Mobile Depot Activity, Detachment 904 of the 9th District Office of Special Investigations, the 3380th Field

Printing Squadron, a Trainer Area Depot Maintenance Detachment, Detachment 2 of the 1800th Support Squadron, the resident office of the 1033 rd Auditor General Squadron, a United States Air Force Security Service Liaison Team, and the District Engineer of the United States Army Engineers.

9. Keesler Air Force Base is located on property owned by the plaintiff adjacent to the City of Biloxi. Biloxi, located in Harrison County, has a population of approximately 45,000 persons. Gulfport, located in Harrison County, has a population of approximately 30,000 persons. Harrison County has a population of approximately 120,000 persons.

10. There are approximately 25,225 military personnel and 2,590 civilian employees of the plaintiff stationed and employed at Keesler Air Force Base.

11. The plaintiff has constructed and assisted in the construction of 1,865 family housing units located (R-4) on Keesler Air Force Base. These units, which are owned and maintained by the plaintiff, have been constructed so that servicemen who are stationed at the base may live together with their families. Of these housing units, 530 have been built under the provisions of Title VIII of the National Housing Act, as amended on August 11, 1955 (Capehart Act, 42 U.S.C. 1594; 12 U.S.C. 1748, et seq.); 834 have been built under the provisions of Title VIII of the National Housing Act as

in effect prior to August 11, 1955 (Wherry Act, 12 U.S.C. 1702 et seq., 1748 et seq.); 175 have been constructed under provisions of Title VIII of the National Housing Act (Lanham Act, 42 U.S.C. 1521 et seq.), and 326 have been constructed from funds appropriated by Congress for the Department of Defense.

12. There are no educational facilities on Keesler Air Force Base available to the school-age dependents of members and civilian employees of the plaintiff's Armed Services.

13. The Biloxi Board maintains and operates fourteen public schools for the education of children residing within the boundaries of the Biloxi Municipal Separate School District, including dependents of members and civilian employees of the plaintiff's Armed Services. These schools are Beauvoir, Dukate, Gorenflo, Howard #2, Jeff Davis, Lopez, Popps Ferry, West End and Perkins elementary schools; Fernwood elementary-junior high school; Central and Mary L. Michel junior high schools; Biloxi senior high school; and Nichols junior-senior high school.

14. Under the provisions of Chapter 13 of Title 20 of the United States Code, the Commissioner of Education has approved and the plaintiff has paid to the Biloxi Board during the period from 1951 to the present time a total of \$2,356,867 for the maintenance and operation of its schools. (R-5) These grants were approved and the payments made on account of the Biloxi Board providing public

education for the dependents of members and civilian employees of the plaintiff's Armed Services, and the proceeds were used by the Biloxi Board to defray the general cost of maintaining and operating its public schools. A tabulation of the grants paid and the number of service-connected dependents on whose accounts they were paid, for each year since 1951, is set forth as Appendix A to this complaint.

15. Under the provisions of Chapter 19 of Title 20, United States Code, the United States Commissioner of Education has approved and the plaintiff has paid grants in the total amount of \$2,158,869.35 during the period from 1950 to the present time for the construction and improvement of the schools under the operating jurisdiction of the Biloxi Board. A tabulation of the funds paid by the plaintiff to the Biloxi Board on individual construction projects appears as Appendix B to this complaint.

16. Gorenflo Elementary School is located at 921 Lameuse Street in Biloxi. The construction of Gorenflo Elementary School, consisting of five classrooms, necessary service rooms including book storage and office for faculty, cafeteria and kitchen, was completeted on September 18, 1952, at a total cost of \$117,308.50. The plaintiff has paid to the Biloxi Board the entire cost of this construction under a grant applied for by the Biloxi Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code.

17. Lopez Elementary School is located at 1317 West Howard Avenue in Biloxi. A two-story addition to Lopez Elementary School, consisting of four classrooms, toilet rooms, storage rooms, cafeteria with kitchen, detached boiler room, renovation of the existing boiler room, and renovation of the existing toilet and music room, was completed on April 19, 1954, at a total cost of \$114,629.20. The plaintiff has paid to the Biloxi Board the entire cost of this construction under a grant applied for by the Biloxi Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code.

18. Perkins Elementary School is located at 950 Bellman Street in Biloxi and has a capacity of approximately 720 students. The construction of Perkins Elementary School, consisting of six classrooms, office suite, storage rooms, lunch-multi-purpose room with stage, kitchen and auxiliary rooms, boiler and janitor's rooms, covered walk and toilets, was completed on March 11, 1954, at a total cost of \$122,809.10. Of this total cost of construction, the plaintiff has paid \$113,600.00 to the Biloxi Board under a grant applied for by the Biloxi Board and approved by the Commisioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code. An addition to Perkins Elementary School, consisting of four classrooms, covered connecting walk and auxiliary facilities, was completed on April 3, 1959, at a total cost of \$43,332.80. Of

this total cost of construction, the plaintiff has paid \$19,565.00 to the Biloxi Board under a grant applied for by the Biloxi Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code. (R-7)

19. Mary L. Michel Junior High School is located on Father Ryan Avenue in Biloxi. The construction of Mary L. Michel Junior High School, consisting of ten classrooms, audio-visual room, four domestic science rooms, science room, art room, typing room, library, multi-purpose room with stage, chorus and piano rooms, band and practice rooms, drafting room, cafeteria and kitchen, boiler room, administrative suite, clinic, teachers' rooms, auxiliary rooms, a separate and detached building with shower and dressing rooms and necessary moveable furniture and equipment, was completed on February 15, 1955, at a total cost of \$657,660.37. Of this total cost of construction, the plaintiff has paid \$648,150.00 to the Biloxi Board under a grant applied for by the Biloxi Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code. An addition to Mary L. Michel Junior High School, consisting of four classrooms with auxiliary facilities and necessary equipment, was completed on November 27, 1960, at a total cost of \$46,339.01. The plaintiff has paid to the Biloxi Board the entire cost of this construction under a grant applied for by the Biloxi Board and approved by the Commissioner of Education pursuant

to the provisions of Chapter 19 of Title 20, United States Code.

20. Beauvoir Elementary School is located on Dewey Lawrence Boulevard in Biloxi. The construction of Beauvoir Elementary School, consisting of nine self-contained classrooms, thirteen regular classrooms, multi-purpose room with stage, cafeteria, kitchen with service areas, administrative suite with clinic, heating room and workshop, auxiliary facilities, site work, covered walk and bus loading platform, was completed on September 21, 1959, at a total cost of (R-8) \$467,435.38. Of this total cost of construction, the plaintiff has paid \$354,466.00 to the Biloxi Board under a grant applied for by the Biloxi Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code.

21. Jeff Davis Elementary School is located at 834 St. Mary's Boulevard in Biloxi. The construction of Jeff Davis Elementary School, consisting of twelve self-contained classrooms, eight regular classrooms, administration suite with clinic and teachers' workroom, book storage room, cafeteria, kitchen with service areas, mechanical room, multi-purpose room with stage, auxiliary facilities, covered bus loading dock, three short covered walks and equipment, was completed on May 25, 1961, at a total cost of \$386,247.64. The plaintiff has paid to the Biloxi Board the entire cost of this construction under a grant applied for by the Biloxi Board and approved by the Commissioner of

Education pursuant to the provisions of Chapter 19 of Title 20, United States Code.

22. Popps Ferry Elementary School is located on Will Rich Drive at Popps Ferry Road. The construction of Popps Ferry Elementary School, consisting of eight regular classrooms, twelve self-contained classrooms, storage room, administrative suite, multi-purpose room with stage, cafeteria with kitchen and service areas, two teachers' workrooms, boiler room, covered walks, bus loading dock, septic tank and field, equipment and auxiliary facilities, was completed on July 21, 1961, at a total cost of \$390,717.11. Of this total cost of construction, the plaintiff has paid \$326,066.00 to the Biloxi Board under a grant applied for by the Biloxi Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code. (R-9)

23. Central Junior High School is located at 503 East Howard Avenue in Biloxi. An addition to Central Junior High School is currently under construction at an estimated cost of \$32,693.05. Of this total estimated cost of construction, the plaintiff has approved payment of \$32,498.00 to the Biloxi Board under a grant applied for by the Biloxi Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code.

24. In connection with each of its applications for a grant under Chapter 19 of Title 20, United States Code, as referred to in

paragraphs 15 through 23, the Biloxi Board gave written assurance, as required by 20 U.S.C. 636, that the school facilities of the Biloxi Board "will be available to the children for whose education contributions are provided . . . on the same terms, in accordance with the laws of the State in which applicant is situated, as they are available to other children in applicant's school district. "

25. Approximately 3,600 children of military personnel and civilians stationed or employed at Keesler Air Force Base, at the Veterans Administration Hospital and at other installations of the plaintiff within Harrison County, are attending the public schools operated by the Biloxi Board. Of these children, approximately 250 are Negroes.

26. Of the children referred to in the preceding paragraph, approximately 1600 are dependents of military personnel of the plaintiff residing on Keesler Air Force Base. Of these, 23 are Negroes.

27. It is the policy and practice of the defendants in operating the public schools under their jurisdiction to segregate Negro students in separate schools maintained and operated solely for students who are of the Negro race. (R-10)

28. The defendant Biloxi Board has operated and is presently operating Beauvoir, Dukate, Gorenflo, Howard #2, Jeff Davis, Lopez, Popp's Ferry and West End elementary schools; Fernwood Elementary-Junior High School; Central and Mary L. Michel junior high

schools; and Biloxi Senior High School for the education of white children exclusively. The Biloxi Board has operated and is presently operating Perkins Elementary School and Nichols Junior-Senior High School for the education of Negro children exclusively.

29. Pursuant to the policy and practice of the defendants to assign students to schools according to their race, all Negro school-age dependents of military personnel and civilian employees of the plaintiff residing within the boundaries of the Biloxi Municipal Separate School District are compelled to attend schools operated exclusively for members of the Negro race and are not permitted to attend schools available to white children similarly situated.

30. The defendants have failed and now failing to make the public school facilities under their jurisdiction available to Negro dependents of the members and employees of the Armed Services of the plaintiff upon the same terms as such facilities are available to white children.

31. The Biloxi Board has failed and is now failing and refusing to perform each of its assurances referred to and described in paragraph 24.

32. The acts and conduct of the defendants herein alleged violate the Fourteenth Amendment to the Constitution.

33. The defendants will, unless restrained by order of this Court, continue unconstitutionally to segregate dependents of military

personnel and civilian employees of the plaintiff according to race in the public schools (R-11) operated by the defendants, thereby violating the written assurances described in paragraph 24 and causing irreparable injury to the plaintiff consisting of impairment of the services and morale of its military and civilian personnel and the separation of servicement from their families where the servicemen send their children to schools outside the area of the military installation at which they are stationed in order to avoid subjecting the children to racial discrimination in their education.

34. The plaintiff has no adequate remedy at law.

SECOND CLAIM

The United States, as a claim against the Gulfport Municipal Separate School District, James S. Eaton, Mrs. Charles R. Storey, Earl C. Gay, A. L. Green, G. M. Owen and W. L. Rigby, alleges:

35. Plaintiff realleges all of the facts alleged in paragraphs 1, 2, 3, 7, 8, 9, 10, 11, 12, 27, 30, 32 and 34.

36. The Board of Trustees of the Gulfport Municipal Separate School District (hereafter referred to as the Gulfport Board) is vested under Mississippi law with the general administration and supervision of the public schools of the City of Gulfport. The Gulfport Board is composed of five members. Its principal office is in the City of Gulfport.

37. James S. Eaton is President of the Gulfport Board and Mrs. Charles R. Storey, Earl C. Gay, A. L. Green and G. M. Owen are members of the Gulfport Board. Each resides in Harrison County, Mississippi.

38. W. L. Rigby is the Superintendent of Education of the Gulfport Board and as such is its chief executive officer. He resides in Gulfport. (R-12)

39. The Gulfport Board maintains and operates seventeen public schools for the education of children residing within the boundaries of the Gulfport Municipal Separate School District, including dependents of military personnel and civilian employees of the plaintiff. These schools are Bayou, Central, North Central, Northeast, East Ward, West Ward, Mississippi City, Pass Road, Handsboro, Anniston Avenue, Soria City and Gaston Point elementary schools; East, West and Bayou junior high schools; Gulfport Senior High School and Thirty-Third Avenue Elementary-Junior-Senior High School.

40. Under the provisions of Chapter 13 of Title 20 of the United States Code, the Commissioner of Education has approved and the plaintiff has aid to the Gulfport Board during the period from 1951 to the present time a total of \$1,098,370.75 for the maintenance and operation of its schools. These grants were approved and the payments made on account of the Gulfport Board providing public education for the dependents of military personnel and civilian

employees of the plaintiff, and the proceeds were used by the Gulfport Board to defray the general cost of maintaining and operating its public schools. A tabulation of the grants paid and the number of service-connected dependents on whose account they were paid, for each year since 1951, is set forth as Appendix C to this complaint.

41. Under the provision of Chapter 19 of Title 20, United States Code, the United States Commissioner of Education has approved and the plaintiff has paid or agreed to pay grants in the total amount of \$1,240,478.35 during the period from 1950 to the present (R-13) for the construction and improvement of the schools under the operating jurisdiction of the Gulfport Board. A tabulation of the funds paid by the plaintiff to the Gulfport Board on individual construction projects appears as Appendix D to this complaint.

42. Handsboro Elementary School is located in Handsboro, Mississippi. An addition to Handsboro Elementary School, consisting of two classrooms, covered walkways and equipment, and the installation of equipment in an existing kitchen and lunchroom, was completed on November 1, 1953, at a total cost of \$34,585.26. The plaintiff has paid to the Gulfport Board the entire cost of this construction under a grant applied for by the Gulfport Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code.

43. Bayou Elementary School is located on Washington Avenue

in Gulfport. The construction of Bayou Elementary School, consisting of fourteen classrooms, multi-purpose room, cafeteria and kitchen, clinic, office suite, toilets and boiler room, was completed on October 28, 1953, at a total cost of \$189,070.78. Of this total cost of construction, the plaintiff has paid \$150,014.00 to the Gulfport Board under a grant applied for by the Gulfport Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code.

44. The Thirty-Third Avenue Elementary-Junior-Senior High School is located at 33rd Avenue and 20th Street in Gulfport. The construction of the Thirty-Third Avenue Elementary-Junior-Senior High School, consisting of fifteen regular classrooms, laboratory, commerce room, (R-14) shop and home economics department, library and study, administrative offices, teachers' lounge, toilets and boiler room, a separate cafeteria-kitchen building, a separate multi-purpose building with stage, dressing rooms and two classrooms, covered connecting walks and movable furniture and equipment, was completed on July 12, 1954, at a total cost of \$587,119.25. The plaintiff has paid to the Gulfport Board the entire cost of this construction under a grant applied for by the Gulfport Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code. An addition to the school, consisting of four self-contained classrooms

and two regular classrooms, enlargement of existing cafeteria, appurtenant facilities and equipment, was completed on September 26, 1958, at a total cost of \$105,033.46. Of this total cost of construction, the plaintiff has paid \$104,940.00 to the Gulfport Board under a grant applied for by the Gulfport Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code.

45. East Junior High School is located on 28th Street in Gulfport. An addition to East Junior High School, consisting of four regular classrooms with lockers, corridors and necessary equipment, was completed on February 7, 1958, at a total cost of \$41,372.34. The plaintiff has paid to the Gulfport Board the entire cost of this construction under a grant applied for by the Gulfport Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code. (R-15)

46. West Junior High School is located on 44th Avenue in Gulfport. An addition to West Junior High School, consisting of three regular classrooms and one typing classroom, each with wall lockers and equipment, was completed on November 26, 1958, at a total cost of \$45,740.86. The plaintiff has paid to the Gulfport Board the entire cost of this construction under a grant applied for by the Gulfport Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code.

47. Mississippi City Elementary School is located on Dolan Avenue in Mississippi City. An addition to Mississippi City Elementary School, consisting of four self-contained classrooms, covered walk, auxiliary facilities, septic tank with fields, site drainage improvements and necessary equipment, was completed on November 16, 1959, at a total cost of \$63,279.64. The plaintiff has paid to the Gulfport Board the entire cost of this construction under a grant applied for by the Gulfport Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code.

48. Gaston Point Elementary School is located south of 17th Street and west of Mills Avenue in Gulfport. The construction of Gaston Point Elementary School, consisting of two self-contained classrooms, four regular classrooms, administrative suite with clinic, book storage, cafetorium with stage, kitchen and pantry, connecting corridors and auxiliary facilities, site work including paving for bus loading, parking areas, walks and drives, sewage lift station and equipment, was completed on (R-16) July 20, 1961, at a total cost of \$132,122.25. Of this total cost of construction, the plaintiff has paid \$132,000.00 to the Gulfport Board under a grant applied for by the Gulfport Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code.

49. Gulfport High School is located on 15th Street in Gulfport. An addition to Gulfport High School, consisting of eight regular classrooms, one language laboratory, one mechanical drawing room, two locker areas, two teachers' workrooms, mechanical room, boys' and girls' toilet rooms, auxiliary facilities and site work including walks, was completed on August 2, 1961, at a total cost of \$145,319.64. Of this total cost of construction, the plaintiff has paid \$81,427.00 to the Gulfport Board under a grant applied for by the Gulfport Board and approved by the Commissioner of Education pursuant to the provisions of Chapter 19 of Title 20, United States Code.

50. In connection with each of its applications for a grant under Chapter 19 of Title 20, United States Code, as referred to in paragraphs 41 through 49, the Gulfport Board gave written assurance, as required by 20 U.S.C. 636, that the school facilities of the Gulfport Board "will be available to the children for whose education contributions are provided . . . on the same terms, in accordance with the laws of the State in which applicant is situated, as they are available to other children in applicant's school district."

51. Approximately 2,000 children of military personnel and civilian employees of the plaintiff residing within the Gulfport Municipal Separate School District attend the public schools operated by the Gulfport Board. Of these children, approximately 130 are Negroes.

(R-17) 52. The defendant Gulfport Board has operated and is

presently operating Bayou, Central, North Central, Northeast, East Ward, West Ward, Mississippi City, Pass Road and Handsboro elementary schools; East, West and Bayou junior high schools; and Gulfport Senior High School for the education of white children exclusively. The defendant Gulfport Board has operated and is presently operating Soria City and Gaston Point elementary schools and Thirty-Third Avenue Elementary-Junior-Senior High School for the education of Negro children exclusively.

53. Pursuant to the policy and practice of the defendants to assign students to schools according to their race, all Negro school-age dependents of the military personnel and civilian employees of the plaintiff residing within the boundaries of the Gulfport Municipal Separate School District are compelled to attend schools operated exclusively for members of the Negro race and are not permitted to attend schools available to white children similarly situated.

54. Pursuant to the policy and practice of the defendants to assign students to schools according to their race, the defendants assign Negro school-age dependents of military personnel and civilian employees of the plaintiff residing within the boundaries of the Gulfport Municipal Separate School District to schools further from their residences than other schools operated by the defendants for the education of white children exclusively.

55. The Gulfport Board has failed and is now failing and

refusing to perform each of its assurances referred to and described in paragraph 50.

56. The defendants will, unless restrained by order of this Court, continue unconstitutionally to (R-18) segregate dependents of military personnel and civilian employees of the plaintiff according to race in public schools operated by the defendants, thereby violating the written assurances described in paragraph 50 and causing irreparable injury to the plaintiff consisting of impairment of the services and morale of its military and civilian personnel and the separation of servicemen from their families when the servicemen send their children to schools outside the area of the military installation at which they are stationed in order to aviod subjecting the children to racial discrimination in their education.

WHEREFORE, plaintiff prays that this Court enter an order enjoining the defendants, their successors in office, agents, employees, and all persons in active concert or participation with them, from segregating or discriminating against, among, or between, upon the basis of their race or color, any dependents of military personnel or civilian employees of the plaintiff in the operation of public schools, together with such additional relief as may be appropriate.

UNITED STATES OF AMERICA,

Plaintiff,

By:

/s/ Burke Marshall
BURKE MARSHALL
Assistant Attorney General

/s/ Robert E. Hauberg
ROBERT E. HAUBERG
United States Attorney

/s/ S. John Barrett
ST. JOHN BARRETT, Attorney
Department of Justice

/s/ David H. Marlin
DAVID H. MARLIN, Attorney
Department of Justice

(R-19, 20, 21 and 22 -Appendix A & Appendix B are not copied here, because upon order of the Court the originals will go up with the printed record.)

* * *

(R-23)

M O T I O N
(Title omitted-Filed Jan. 29, 1963)

Comes the plaintiff in the above styled cause and before any responsive pleadings have been served, moves the Court for permission to amend the original complaint because of error in the name of one of the parties by striking the name of Charles R. Storey wherever it appears and inserting in lieu thereof Mrs. Charles R. Storey, and

that she be served with process in this cause.

UNITED STATES OF AMERICA,

Plaintiff,

By:

/s/ Robert E. Hauberg

ROBERT E. HAUBERG

United States Attorney

(R-24 Certificate of Service, which is not copied here.)

* * *

(R-25)

O R D E R

(Title omitted-Filed Feb. 1, 1963)

This cause came on for hearing on motion by the plaintiff before any responsive pleadings have been filed and it appearing unto the Court that Charles R. Storey is erroneously named in the complaint herein and that Mrs. Charles R. Storey is the party intended to be named and she should be substituted therein;

It is therefore ordered that the plaintiff through its attorney be authorized and permitted to strike the name Charles R. Storey wherever it appears in the original complaint and insert in lieu thereof the name Mrs. Charles R. Storey in red ink.

It is further ordered that a summons be served on Mrs. Charles R. Storey with a copy of this order and a copy of the original

complaint as amended and that each of the other parties be sent a certified copy of this order by regular mail.

ORDERED this 1st day of February, A. D., 1963.

/s/ Harold Cox
UNITED STATES DISTRICT JUDGE

O. B. - 1963, Page 82

* * *

(R-26)

MOTION TO DISMISS
(Title omitted-Filed Feb. 11, 1963)

Comes now the Biloxi Municipal Separate School District, J. A. Graves, President, and Peter J. Kuljis, C. T. Switzer, Richard Creel, and Mrs. Dudley Andrews, members of the Board of Trustees of the Biloxi Municipal Separate School District of Harrison County, Mississippi; and R. D. Brown, Superintendent of Education of Biloxi Municipal Separate School District of Harrison County, Mississippi, Defendants in the above-styled and numbered cause, and file this their Motion to Dismiss the Complaint filed herein insofar as it pertains to said defendants; and in support hereof, defendants would (R-27) respectfully show unto the Court as follows, to-wit:

1. That this Court is vested with no jurisdiction of the parties or the subject matter as set out in the Complaint filed herein.
2. That the Complaint fails to state a claim upon which

relief can be granted.

3. That the United States of America has no standing as plaintiff in this Court for the reason that the United States of America does not have the requisite interest in the subject matter as alleged in said Complaint to maintain such action.

BILOXI MUNICIPAL SEPARATE SCHOOL DISTRICT
J. A. GRAVES, PRESIDENT
PETER J. KULJIS
C. T. SWITZER
RICHARD CREEL
MRS. DUDLEY ANDREWS
R. D. BROWN, SUPERINTENDENT

BY /s/ Victor B. Pringle
VICTOR B. PRINGLE - Their Attorney

(This instrument carries proper Certificate of Service, which is not copied here.)

(R-28 - Certificate of Service, which is not copied here.)

* * *

(R-29)

MOTION OBJECTING TO JOINDER OF
PARTIES AND FOR SEVERANCE
(Title omitted-Filed Feb. 11, 1963)

Comes now the Biloxi Municipal Separate School District,
J. A. Graves, President, Peter J. Kuljis, C. T. Switzer, Richard
Creel, and Mrs. Dudley Andrews, members of the Board of Trustees
of the Biloxi Municipal Separate School District of Harrison County,
Mississippi, and Robert D. Brown, Superintendent of Education of the

Biloxi Municipal Separate School District of Harrison County, Mississippi, Defendants in the above-styled and numbered cause, and file this their Motion Objecting to Joinder of Parties and for Severance and motion to require plaintiff to separate the claims as ascertained in the Complaint; and in support hereof, said defendants (R-30) would respectfully show unto the Court the following facts, to-wit:

1. That the Complaint as filed herein is divided into two separate and distinct claims styled First Claim and Second Claim. That the said First Claim purportedly states a cause of action against the Biloxi Municipal Separate School District, the officers and members of the Board of Trustees of the Biloxi Municipal Separate School District, and the Superintendent of the said district; that the said Second Claim purports to state a cause of action against the Gulfport Municipal Separate School District, the officers and members of the Board of Trustees, and the Superintendent of said School District.

2. The movents herein would show that the Biloxi Municipal Separate School District and its Trustees, and the Gulfport Municipal Separate School District and its Trustees are completely separate entities, that each of said groups acts totally and completely independently of the other and are not bound or controlled by the action of the other group.

3. Movents would further show that the facts as alleged in the Second Claim are totally different from the facts alleged in the

First Claim, and your movents herein have no way to ascertain the facts alleged in said Second Claim or the actions taken therein by the officers and trustees of the Gulfport Municipal Separate School District.

4. Movents would show that the two claims alleged in said Complaint are separate and severable, and that any hearing thereon should be as separate actions.

WHEREFORE, movents would suggest that there has been a misjoinder of defendants and actions in said Complaint, and (R-31) that the Court should require the said First Claim and Second Claim to be separated as two separate causes of action.

BILOXI MUNICIPAL SEPARATE SCHOOL DISTRICT
J. A. GRAVES, PRESIDENT
PETER J. KULJIS
C. T. SWITZER
RICHARD CREEL
MRS. DUDLEY ANDREWS
R. D. BROWN, SUPERINTENDENT

BY /s/ Victor B. Pringle
VICTOR B. PRINGLE - Their Attorney

(This instrument carries proper Certificate of Service, which is not copied here.)

(R-32 Continuation of Certificate of Service)

* * *

MOTION TO DISMISS
(Title omitted-Filed Feb. 12, 1963)

Come now Gulfport Municipal Separate School District, James S. Eaton, President, and Mrs. Charles R. Storey, Earl C. Gay, A. L. Green and G. M. Owen, members of the Board of Trustees of the Gulfport Municipal Separate School District, and W. L. Rigby, Superintendent of the Gulfport Municipal Separate School District, defendants in the above styled and numbered cause, and file this their motion to dismiss the complaint filed herein insofar as it pertains to said defendants; and in support hereof, defendants would respectfully show unto the Court as follows, to-wit:

1: That this Court is vested with no jurisdiction of the parties or subject matter as set out in the complaint filed herein.

2: That the complaint fails to state a claim upon which relief can be granted.

3: That the United States of America has no standing as plaintiff in this Court for the reason that the said United States of America does not have the requisite interest in the subject matter as alleged in said complaint to maintain such action. (R-34)

WHEREFORE, said defendants pray that this their motion be received and filed, and that upon hearing hereon, the complaint filed herein shall be dismissed at the cost of the plaintiff.

GULFPORT MUNICIPAL SEPARATE
SCHOOL DISTRICT

JAMES S. EATON, PRESIDENT
MRS. CHARLES R. STOREY
EARL C. GAY
A. L. GREEN
G. M. OWEN
W. L. RIGBY, SUPERINTENDENT

BY: /s/ Owen T. Palmer, Jr.
Owen T. Palmer, Jr.
Attorney for said Defendants
2209 Fourteenth Street
Gulfport, Mississippi

(R-35 - Certificate of Service, which is not copied here.)

* * *

(R-36)

MOTION OBJECTING TO JOINDER OF
PARTIES AND FOR SEVERANCE
(Title omitted-Filed Feb.12,1963)

Come now Gulfport Municipal Separate School District, James S. Eaton, President, and Mrs. Charles R. Storey, Earl C. Gay, A. L. Green and G. M. Owen, members of the Board of Trustees of the Gulfport Municipal Separate School District, and W. L. Rigby, Superintendent of the Gulfport Municipal Separate School District, defendants in the above styled and numbered cause, and file this their motion objecting to joinder of parties and for severance of the claims as asserted in the complaint; and in support hereof, said defendants would respectfully show unto the Court the following facts, to-wit:

1: That the complaint as filed herein is divided into two

separate and distinct claims styled First Claim and Second Claim.

That the said First Claim purportedly states a cause of action against the Biloxi Municipal Separate School District, the officers and members of the Board of Trustees of the Biloxi Municipal Separate School District, and the Superintendent of the said district; that the Second Claim purports to state a cause of action against the Gulfport Municipal Separate School District, the officers and members of the Board of Trustees, and the Superintendent of said School District. (R-37)

2: The movants herein would show that the Biloxi Municipal Separate School District and its Trustees, and the Gulfport Municipal Separate School District and its Trustees are completely separate entities, that each of said groups acts totally and completely independently of the other and is not bound or controlled by the action of the other group.

3: Movants would further show that the facts as alleged in the First Claim are totally different from the facts alleged in the said Second Claim, and your movants herein have no way to ascertain the facts alleged in said First Claim or the actions taken therein by the officers and Trustees of the Biloxi Municipal Separate School District. Your movants would further show that a trial of both claims in the same action would irreparably prejudice the interest of the movants and would unduly complicate movants' defense to the Second Claim.

4: Movants would show that the two claims alleged in said

complaint are separate and severable, and that any hearing thereon should be as separate actions.

WHEREFORE, movants would object to the joinder of parties and would ask that the Court require First Claim and Second Claim to be severed.

GULFPORT MUNICIPAL SEPARATE
SCHOOL DISTRICT
JAMES S. EATON, PRESIDENT
MRS. CHARLES R. STOREY
EARL C. GAY
A. L. GREEN
G. M. OWEN
W. L. RIGBY, SUPERINTENDENT

BY: /s/ Owen T. Palmer, Jr.
Owen T. Palmer, Jr.
Attorney for said Defendants
2209 Fourteenth Street
Gulfport, Mississippi

(R-38 - Certificate of Service, which is not copied here.)

* * *

(R-39 & R-40 - Summons and Returns, which are not copied here.)

(R-41 to R-62 Inclusive - Complaint, which is not copied here because it already appears in this record at pages 2 through 23.)

* * *

(R-63 - Summons and Return, which is not copied here.)

* * *

NOTICE OF HEARING OF MOTION
OBJECTING TO JOINDER OF
PARTIES AND FOR SEVERANCE
(Title omitted-Filed April 11, 1963)

The plaintiffs, United States of America, and its attorneys of record will please take notice that the defendants, Biloxi Municipal Separate School District, J. A. Graves, President, and Peter T. Kuljis, C. T. Switzer, Richard Creel, and Mrs. Dudley Andrews, members of the Board of Trustees of the Biloxi Municipal Separate School District, and Robert D. Brown, Superintendent of Education of Biloxi Municipal Separate School District, will call up for hearing their motion objecting to joinder of parties and for severance in the above styled and numbered action, before the United States District Court for the Southern District of Mississippi in the Federal Courtroom on the Fourth Floor of the Federal Post Office Building, at Jackson, Mississippi, at 9:00 a.m. Monday, April 22, 1963, or as soon thereafter as counsel for said defendants can be heard.

This 11th day of April, 1963.

JOE T. PATTERSON, ATTORNEY GENERAL
DUGAS SHANDS, ASSISTANT ATTORNEY GENERAL
VICTOR B. PRINGLE, SPECIAL COUNSEL
THOMAS H. WATKINS, SPECIAL COUNSEL

BY /s/ Thomas H. Watkins

ATTORNEYS FOR SAID DEFENDANTS

(R-65 - Certificate of Service, which is not copied here.)

NOTICE OF HEARING OF MOTION
OBJECTING TO JOINDER OF PARTIES
AND FOR SEVERANCE

(Title omitted-Filed April 11, 1963)

The plaintiff, United States of America, and its attorneys of record will please take notice that the defendants, Gulfport Municipal Separate School District, James S. Eaton, President, and Mrs. Charles R. Storey, Earl C. Gay, A. L. Green, and G. M. Owen, as members of the Board of Trustees of the Gulfport Municipal Separate School District, and W. L. Rigby, as Superintendent of the Gulfport Municipal Separate School District, will call up for hearing their motion objecting to joinder of parties and for severance in the above styled and numbered action, before the United States District Court for the Southern District of Mississippi in the Federal Courtroom on the Fourth Floor of the Federal Post Office Building, at Jackson, Mississippi, at 9:00 a.m. Monday, April 22, 1963, or as soon thereafter as counsel for said defendants can be heard.

This 11th day of April, 1963.

JOE T. PATTERSON, ATTORNEY GENERAL
DUGAS SHANDS, ASSISTANT ATTORNEY GENERAL
OWEN T. PALMER, JR., SPECIAL COUNSEL
THOMAS H. WATKINS, SPECIAL COUNSEL

BY /s/ Thomas H. Watkins
ATTORNEYS FOR SAID DEFENDANTS

(R-67 - Certificate of Service, which is not copied here.)

(R-68 & R-69 - Letter to Clerk of the Court, which is not copied here.)

* * *

(R-70)

ORDER SUSTAINING DEFENDANTS'
MOTIONS FOR SEVERANCE
(Title omitted-Filed April 22, 1963)

THIS ACTION came on for hearing on the motions of the defendants objecting to joinder of parties and for severance, and the Court having considered same, is of the opinion that same motions should be and the same are hereby sustained.

It is, therefore, ordered and adjudged that the First Claim of the plaintiff against Biloxi Municipal Separate School District, the President and members of its Board of Trustees and its Superintendent of Education be and the same is hereby severed from plaintiff's Second Claim (R-71) against Gulfport Municipal Separate School District, the President and members of its Board of Trustees and its Superintendent of Education.

It is further ordered and adjudged that said claims as severed shall be proceeded with separately as separate and distinct actions, and that said First Claim shall continue to carry the original Civil Action Number given this action, and that said Second Claim shall be given the next open Civil Number on the docket of the Clerk of this Court.

It is further ordered and adjudged that a copy of the complaint as presently filed, together with copies of the pleadings and motions filed by the defendants to the Second Claim, shall be filed by the Clerk of this Court in the new action involving said Second Claim, without the necessity of any of said parties refiling any of said pleadings.

ORDERED AND ADJUDGED, this 22nd day of April, 1963.

/s/ S. C. Mize
UNITED STATES DISTRICT JUDGE

O. B. - 1963, Page 273-A and 273-B.

* * *

(R-72 - Notice of Hearing on Defendant's Motion to Dismiss, which is not copied here.)

(R-73 - Certificate of Service, which is not copied here.)

* * *

LETTER OPINION OF THE COURT
(Filed-June 17, 1963)

UNITED STATES DISTRICT COURT

Southern District of Mississippi

GULFPORT, MISSISSIPPI

Chambers of
SIDNEY C. MIZE
District Judge

June 17, 1963

Honorable Burke Marshall
Assistant Attorney General
Washington, D. C.

Honorable Thomas J. Wiltz
Peoples Bank Building
Biloxi, Mississippi

Honorable St. John Barrett
Assistant Attorney General
Washington, D. C.

Honorable Joe T. Patterson
Attorney General of Mississippi
Jackson, Mississippi

Honorable Robert E. Hauberg
United States Attorney
Jackson, Mississippi

Honorable Tom H. Watkins
Plaza Building
Jackson, Mississippi

Re: United States of America
v. No. 2643--Southern Division
Biloxi Municipal Separate School
District, et al

Gentlemen:

A complaint was filed in the above styled matter, including in the same complaint the City of Gulfport Municipal School District. On April 22, 1963, I sustained a motion separating the complaints and required that separate suits be maintained. On February 11, 1963 a motion to dismiss was filed on behalf of Biloxi Municipal Separate School District, et al and the above case was given the original number on the Civil Docket. On may 16, 1963, after having

considered the oral arguments, the briefs and the record in the Gulfport case, I rendered an opinion sustaining the motion to dismiss for the reasons stated in the opinion and the order entered that date was one dismissing the suit against the Gulfport Municipal School District. Since that time briefs have been filed on the motion of the defendants in the above styled case to dismiss and I have considered all the briefs, along with the briefs filed in the Gulfport case, the oral arguments, and have considered and checked the records carefully, and I find that the principles of law governing the right to bring the suit by the Government are the same in each case and, therefore, am of the opinion now that the decision rendered in the Gulfport case is completely applicable to the principles of law involved in the above styled case, and rather than write an additional opinion in the Biloxi case, I will adopt the opinion that I rendered in the Gulfport case on May 16, 1963 as the opinion in the instant case, without repeating the opinion verbatim, adopting all of the authorities cited in that opinion. I have not had an opportunity yet to (R-75) have the opinion published, but hope to do so in the very near future so that it may be among the public authorities.

I am enclosing herewith a copy of an order that I am this day signing dismissing the complaint with prejudice and filing a copy of this letter as my letter opinion in the instant case.

With kindest regards to all of you, I am

Sincerely yours,

/s/ Sidney C. Mize
Judge

(Following is Opinion of the Court attached to Letter Opinion.)

(R-76)

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

VS.

CIVIL ACTION NO. 2678
(Filed May 16, 1963)

GULFPORT MUNICIPAL SEPARATE SCHOOL DISTRICT:
JAMES S. ~~BATON~~, President, and CHARLES R.
STOREY, EARL C. GAY, A. L. GREEN and G. M.
OWEN, Members of the Board of Trustees of
Gulfport Municipal Separate School District;
and W. L. RIGBY, Superintendent of Education
of Gulfport Municipal Separate School District

DEFENDANTS

This is an action brought by the United States of America seeking to enjoin the Defendants from separating upon the basis of race or color any dependents of military personnel or civilian employees of the Plaintiff in the operation of the public schools of the Gulfport Municipal Separate School District in Harrison County, Mississippi. This relief is sought on the ground that the Defendants

have and are violating their Assurances given under Chapter 19 of Title 20, United States Code, and have by their acts and conduct violated the Fourteenth Amendment to the Constitution of the United States.

The Plaintiff alleges as a basis for the relief sought the following facts:

1. The United States of America maintains Keesler Air Force Base, a large military installation, and a Veterans Administration Hospital in Harrison County, Mississippi. (R-77)

2. Approximately 2,000 children of military personnel and government employees attend the schools of the Gulfport Municipal Separate School District, including approximately 130 Negroes. The United States government does not have facilities for the education of these children.

3. The ~~Gulfport~~ Municipal Separate School District maintains and operates 17 public schools for the education of children within the district.

4. From 1951 to the present time the Commissioner of Education has approved and the Plaintiff has paid to the Gulfport Municipal Separate School District a total of \$1,098,370.75 for the maintenance and operation of the schools in the Gulfport Municipal Separate School District under Chapter 13 of Title 20, United States Code.

5. The United States Commissioner of Education from 1950

to date has approved and the Plaintiff has paid or agreed to pay grants to the Gulfport Municipal Separate School District in the amount of \$1,240,478.35 for the construction and improvement of the schools of the district under Chapter 19 of Title 20, United States Code.

6. A large proportion of these payments under both Chapter 13 and Chapter 19 of Title 20, United States Code, have been made by the Plaintiff since 1954.

7. The Gulfport Municipal Separate School District in connection with each of its applications for grants under Chapter 19 of Title 20, United States Code, has given written Assurances, as required by 20 U.S.C. 636, that the school facilities of the district "will be available to the children for whose education contributions are provided . . . on the same terms, in accordance with the laws of the state in which applicant is situated, as they are available to other (B-78) children in applicant's school district."

8. It is the policy and practice of the Defendants in operating the public schools of the district to enroll white and Negro students in separate schools maintained and operated exclusively for students who are of the white or Negro race. As a result thereof all Negro school-age dependents of military personnel and civilian employees of the Plaintiff residing within the district attend schools operated exclusively for members of the Negro race.

The Complaint alleges injury to the Plaintiff consisting of

impairment of the services and morale of its military and civilian personnel because of the possibility of separation of servicemen from their families if any of said servicemen send their children to schools outside the area of the military installation at which they are stationed in order to avoid subjecting the children to racial segregation in their education.

The Defendants have moved to dismiss the Complaint upon the ground that the United States of America has no standing as Plaintiff in this Court and does not have the requisite interest in the subject matter to maintain the action and upon the ground that the Complaint fails to state a claim upon which relief can be granted.

The Court will first consider the right or capacity of the United States to enforce any alleged rights under the Fourteenth Amendment to the Constitution and whether or not the United States of America has a cause of action for any alleged violation by the Defendants of the Fourteenth Amendment.

Only natural persons are entitled to the privileges and immunities of the Fourteenth Amendment and the United States is not a "person" nor "within the jurisdiction" of a State under the terms (R-79) and provisions thereof. Hague v. Committee for Industrial Organizations, 307 U.S. 496, 83 L. Ed. 1423; United States v. Nebo Oil Company, D. C. La., 90 F. Supp. 73, affirmed C.A. 5, 190 F. 2d 1003; Scott v. Frazier, D.C. N.D., 258 F 669; United States v.

City of Jackson, D. C. Miss., 206 F. Supp. 45. It is the individual who is entitled to the equal protection of the laws. McCabe v. Atchison, etc., Company, 59 L. Ed. 169, 235 U. S. 151.

Nor can the United States of America sue for the deprivation of civil rights of others. Only persons actually deprived of their individual civil rights can redress such rights. Massachusetts v. Mellon, 262 U.S. 447, 67 L. Ed. 1078; McCabe v. Atchison, etc., Company, *supra*; Brown v. Board of Trustees, C.A. 5, 187 F. 2d 20; Coleman v. Miller, 83 L. Ed. 1385, 307 U.S. 433; Erie Railroad v. Williams, 58 L. Ed. 1155, 233 U.S. 685; Bailey v. Patterson, 7 L. Ed. 2d 512, 369 U.S. 31.

Furthermore, the power to enforce the Fourteenth Amendment to the Constitution is specifically vested in Congress, Section 5 thereof providing: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this Article." See United States v. Reese, 92 U.S. 214, 23 L. Ed. 563.

Congress has never granted to the Executive branch of the government any power or right to enforce the provisions of the Fourteenth Amendment. By 28 U.S.C. 1343 Courts are given jurisdiction of suits to enforce civil rights brought "by any person".

The legislative history of the Civil Rights Acts clearly reflects that the failure to grant to the United States the power to bring Civil Rights actions was deliberate on the part of Congress. For example,

an effort was made to have Congress amend 42 U.S.C. 1985 to authorize suits to be brought in the name of the United States, but (R-80) after heated debate the proposed amendment was defeated. Congressional Record, 85th Congress, 1st Session, pages 10998-12565. There was a determined effort to amend the 1960 Civil Rights Act, PL 86-449, 74 Stat. 86, so as to authorize the United States to institute civil proceedings to protect rights under the Fourteenth Amendment. It was unsuccessful. Congressional Record, 86th Congress, March 30th, April 8th, August 30th, 1960, pages 17513-22, et seq. The only Civil Right Act in which Congress has authorized the institution of suits by the United States is 42 U.S.C. 1971 dealing with deprivation of voting rights.

The Court therefore finds that the United States has no cause of action and no standing as a Plaintiff in this Court to enforce any rights under the Fourteenth Amendment to the Constitution.

The next question is whether or not the Complaint states a claim upon which relief can be granted on the ground that the Defendants have breached the terms of the Assurances given under .

20 U.S.C.A. 636.

The Court is of the opinion that the language of the statutory Assurances is unambiguous and that there is no need for the application of any rules of construction; that the Assurances merely provide that the Defendants will treat the children of military personnel or

civilian employees of the United States government in exactly the same manner as other children in the district are treated, i. e. identical treatment for federal children and non-federal children. If identical treatment for the white and colored children of the military personnel or civilian employees of the government had been intended as a part of the assurance given, it would have been easy for the act requiring the assurance to have so provided. Its omission was not an oversight, but was intentional. (R-81) All children attending schools in the Defendants' district are admitted on the same terms, i. e. all white children without exception are alleged to go to white schools and all colored children without exception are alleged to go to schools reserved for the Negro race.

The Acts under which the Assurances were given specifically provide that no agency or department or officer or employee of the United States shall exercise any direction, supervision or control over the personnel, curriculum or program of instruction of any school in the district. 20 U.S.C. 642(a), 20 U.S.C. 241(f), 20 U.S.C. 242(a).

This Court can only enforce contracts as written and will never make contracts for the parties and then enforce them. Bradley v. Howell, Miss., 134 So. 843; Goff v. Jacobs, Miss., 145 So. 728.

It is competent for parties to contract that their agreement will be governed by the laws of any designated state. Castleman v.

Canal Bank, Miss., 156 So. 648; Albritton v. General Finance Corp., C.A. 5, 204 F.2d 125; Armstrong v. Alliance Trust, C.A. 5, 88 F. 2d 449.

Plaintiff cannot urge that there is an implied agreement that school facilities would be available to federal children on any basis other than that applicable to other children in the district. There are no implied terms in any contract where the subject matter is unambiguously covered. McPherson v. Gullett Gin Company, Miss., 100 So. 16; Chesapeake, etc., Co. v. United States, 74 L.Ed. 921, 281 U.S. 385. (R-82)

This construction of the Assurances is in conformity with the history of the legislation and the executive and administrative interpretation thereof.

The administration of both Chapters 13 and 19 of Title 20, United States Code, is delegated to the Commissioner of Education. Financial assistance has been granted by the Commissioner, and funds have been allocated for school construction by the Commissioner with full knowledge of how the schools in the district were operated, and said funds have been thus granted and allocated consistently since the 1954 decision in Brown v. Board of Education, 347 U.S. 483, 495.

In 1958 and again in 1962 an effort was made to amend these Acts so as to specifically provide that the Assurances must provide that the applying school districts would offer the same school facilities

to all federal children regardless of race. In each instance the amendments were defeated. *1 During the hearings before the Subcommittee, on April 16th, 1962, on H.R. 10056 Mr. Burke Marshall, as Assistant Attorney General stated: ". . . The apparent congressional purpose was to provide federal funds for the education of children of our military forces and related civilians even though the educational facilities used were racially segregated." *2 Congress refused to enact H.R. 10056, which provided that the applicant should give

*1 - Congressional Record, 84th Congress, 1st Session, p. 2731, 7974-7977, 12009, 7118-20. See United States Code, Congressional and Administrative News, Vol. I, page 635, et seq. Congressional Record, 87th Congress, 2nd Session, p. 8860.

*2 - Hearings before Subcommittee on Integration in Federally Assisted Public Education Programs of the Committee on Education and Labor, House of Representatives, 87th Congress, 2nd Session, p. 601.

(R-83)

"assurance that such agency will operate its public schools and admit students thereto on a racially nondiscriminatory basis . . ."

The Court therefore concludes that neither under the clear language of the statute nor the executive construction thereof nor the congressional intent is there any contractual liability here on the part of the Defendants.

There is no merit in the argument of Plaintiff that if the Assurances authorize separation of the races in the schools, they are

unconstitutional. The Constitution does not compel or require mixing of the races. Briggs v. Elliott, 132 F.Supp. 776; Cohen v. Public Housing Administration, C.A. 5, 257 F. 2d 73; Holland v. Board of Public Instruction, C.A. 5, 258 F. 2d 730; Shuttlesworth v. Birmingham Board of Education, D.C. Ala., 162 F. Supp. 372, affirmed 358 U.S. 101; Rippy v. Borders, C.A. 5, 250 F.2d 690.

Nor if the Assurances were unconstitutional and void would it follow that Plaintiff here could enforce any contractual rights. An unconstitutional contract is void and there exists no contract to be enforced. The Courts will not under such circumstances make a new contract for the parties and then enforce the contract as made by the Court. Whelchel v. Stennett, Miss., 5 So. 2d 418, and cases cited 91 C. J. S. United States, 173.

Moreover, had the Defendants breached their Assurances the remedy and the relief that Plaintiff could obtain is specifically provided for in and limited by the statutes themselves. The entire administration of the Acts is delegated to the United States Commissioner of Education. 20 U.S.C. 642(b), 242(b). 20 U.S.C. 641 provides that where the Commissioner feels that any assurance given (R-84) Sun Theatre Corporation v. R.K.O. Radio Pictures, C.A. 7, 213 F. 2d 284; Globe Newspaper Co. v. Walker, 52 L.Ed. 1096, 210 U.S. 356; Louisville, etc. R. Co. v. Dixon, Miss., 150 So. 811; Price v. Price, 32 So. 2d 124; Coleman v. Lucas, 39 So. 2d 879; G. & S.I.

R. Co. v. Laurel Oil & Fert. Co., Miss., 160 So. 564_

The Court therefore also finds that Plaintiff has failed to state a claim upon which relief can be granted on the ground that the Defendants have failed or refused to perform the Assurances.

Defendants' Motion to Dismiss is sustained.

SO ORDERED, this the 16th day of May, 1963.

/s/ S. C. Mize
UNITED STATES DISTRICT JUDGE

(SEAL)

A TRUE COPY, I HEREBY CERTIFY,
LORYCE E. WHARTON, CLERK
BY:

/s/ P. Green
Deputy Clerk

* * *

(R-85)

O R D E R
(Title omitted-Filed June 17, 1963)

This cause came on to be heard in the above styled case on the motion of all of the defendants to dismiss the complaint for failure to state a claim upon which judgment could be entered and for lack of the authority of the plaintiff to bring the action, as well as upon other grounds, and the Court having fully considered same, is of the opinion that the motion to dismiss the complaint should be sustained and the complaint dismissed. it is therefore

Ordered by the Court that the motion of the defendants to dismiss the above styled complaint be and it is hereby sustained and the complaint is finally dismissed on its merits.

ORDERED, this the 17th day of June, 1963.

/s/ S. C. Mize
UNITED STATES DISTRICT JUDGE

O. B. - 1963, Page 418

* * *

(R-86)

NOTICE OF APPEAL AND DESIGNATION OF RECORD
(Title omitted-Filed July 15, 1963)

Pursuant to Rule 73 of the Federal Rules of Civil Procedure, the undersigned hereby gives notice that it takes an appeal from the decision and order of the court rendered June 17, 1963, to the United States Court of Appeals for the Fifth Circuit.

The United States hereby designates the entire and complete record including all pleadings, orders, and proceedings in the cause as the record on appeal.

This 15th day of July, 1963.

UNITED STATES OF AMERICA

/s/ Robert E. Hauberg
ROBERT E. HAUBERG
United States Attorney

(R-87 - Certificate of Service, which is not copied here.)

* * *

ORDER SENDING UP ORIGINAL EXHIBITS
(Title omitted-Filed July 31, 1963)

It appearing to the District Court and the Court being of the opinion that certain exhibits should be inspected by the Appellate Court in lieu of copies thereof, it is ordered by the Court that the Clerk of this Court be and the Clerk hereby is directed to safely transport and send up with the printed record the following exhibits:

Appendix A and Appendix B, attached to the Complaint in this cause.

ORDERED, this the 30th day of July, 1963.

/s/ S. C. Mize
UNITED STATES DISTRICT JUDGE

O. B. - 1963, Page 516

* * *

CERTIFICATE OF SERVICE

I, Theresa Herbert, hereby certify that, having made up the appeal record in the case of UNITED STATES OF AMERICA versus BILOXI MUNICIPAL SEPARATE SCHOOL DISTRICT, ET AL, -- No. 2643 in the Southern Division of the Southern District of Mississippi, I have, acting for Honorable Robert E. Hauberg, of counsel for Appellant, served upon Honorable Victor B. Pringle, Honorable Tom H. Watkins and Honorable Joe T. Patterson, one copy each, being three copies of the record, in accordance with the Rules of the United States Court of Appeals for the Fifth Circuit, by mailing same to them at their respective addresses.

THERESA HERBERT