

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

FILED

APR 15 1967

R. C. DOBSON, CLERK

By _____
Deputy Clerk

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

CIVIL ACTION NO. 604-E

ORDER

This cause is now submitted upon the application of the defendants, filed herein on April 10, 1967, advising that said defendants have appealed to the Supreme Court of the United States from the final judgment and decree of this Court made and entered in this cause on March 22, 1967, and by said application they ask this Court to stay in all respects said judgment and decree of March 22, 1967, pending final disposition of said appeal.

Upon consideration of said application, and the oral arguments of counsel in support thereof and in opposition thereto, it appears that the only reasons advanced by the defendants in support of their application for stay are that the order of this Court "involves serious, and substantial constitutional questions, affecting the entire State of Alabama and its educational system" and that the case will possibly become "moot by action of this court in effecting its judgment."

The defendants in this case have, since 1964, been required by order of this Court to eliminate discrimination based upon race or color in Alabama's public schools. This Court's order of March 22, 1967, did not involve any new or novel constitutional or legal principles and did not add to the defendants' obligations to eliminate discrimination in Alabama's public schools. The order of March 22 only made those obligations specific. Interpretations of the order of this Court to the contrary are erroneous and not

factually sound, particularly public statements, now a part of the record in this case, made by one of the defendants in this case to the following effect:

1. This order forces white children to go to all-Negro schools and Negro students to go to predominantly white schools.

2. The three-judge court will determine the assignment of pupils.

3. The order requires in every area of Alabama transferring of students back and forth across town to achieve so-called balance.

4. Under the order, the court will close certain schools and send the children to another part of town or to another part of the county.

5. The order requires the closing of every Negro college, junior college and trade school and every all-Negro elementary and secondary school in the state.

6. Under this order, state funds would be cut off to the Alabama State College here in Montgomery unless white students voluntarily agree to enroll there. The same would be true of the other senior colleges, junior colleges and trade schools; unless white students enroll, state funds would be cut off by order of the court.

7. The three-judge court will determine the granting of certificates to teachers.

8. Under this decree, no person, including teachers and parents, is free to discuss the order of the court, other than to express approval thereof. Any open expression of disapproval subjects the individual to contempt, thus, to a jail sentence without benefit of trial by jury.

9. This decree requires that the teachers say the decree is good.

10. The court means that a freedom of choice plan does not work unless you obtain balance in each and every school system.

11. The court order was rendered in malice and animosity.

Such statements (and no attempt is made to enumerate all that are erroneous) may have the effect of misleading the parents, school authorities, and other citizens of Alabama who are not personally familiar with the decree of this Court of March 22, 1967. While this Court is not concerned with

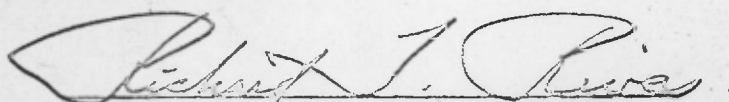
their purpose, it is concerned and will be concerned with the effect of such erroneous and misleading statements. However, copies of the opinion and decree of March 22, 1967, were furnished by this Court to the school superintendent for each of the school districts named in the decree, and the decree and opinion speak for themselves.

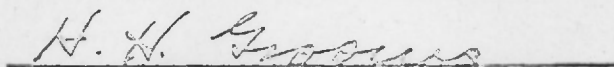
Further delay in the desegregation of Alabama public schools is inconsistent with existing law. The Supreme Court of the United States in Goss v. Board of Education, 373 U.S. 683 (1963), stated: "Delays in desegregating school systems are no longer tolerable." See also Calhoun v. Latimer, 377 U.S. 263; Watson v. City of Memphis, 373 U.S. 526, and Bradley v. School Board of City of Richmond, 382 U.S. 103 (1965). The law is clear that state authorities are "duty bound to devote every effort toward initiating desegregation and bringing about the elimination of racial discrimination in the public school system." Cooper v. Aaron, 358 U.S. 1, 7. Following this philosophy, the United States Court of Appeals for the Fifth Circuit has refused to permit delay in this area. Davis v. Board of School Commissioners of Mobile County, Alabama, 322 F. 2d 356 (1963); Singleton v. Jackson Municipal Separate School District, 348 F. 2d 729 (1965); United States v. Wilcox County Board of Education, 366 F. 2d 769 (1966).

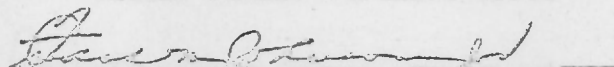
The opinion and decree of this Court made and entered in this cause on March 22, 1967, are firmly grounded on the facts as disclosed by the evidence in this case, on basic constitutional principles, and on an abundance of judicial precedent. The defendants make no showing that will support a delay of this decision. Lucy v. Adams, 350 U.S. 1. Furthermore, balancing the interests of the parties requires a denial of the stay.

For the foregoing reasons, the application of the defendants, filed herein on April 10, 1967, asking that the judgment and decree made and entered in this cause on March 22, 1967, be stayed pending final disposition of an appeal by said defendants to the Supreme Court of the United States from said judgment and decree, is ORDERED to be and the same is hereby denied.

Done, this the 15th day of April, 1967.


RICHARD J. RIVES
UNITED STATES CIRCUIT JUDGE


H. H. GOSS
UNITED STATES DISTRICT JUDGE


AARON JOHNSON
UNITED STATES DISTRICT JUDGE