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No. 72-710

# In the Supreme Court of the United States

OCTOBER TERM, 1972

CITIZENS OF INDIANAPOLIS FOR QUALITY SCHOOLS, INC., ET AL., PETITIONERS

*v.*

UNITED STATES OF AMERICA, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION*

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This case arises as an adjunct to the Indianapolis school desegregation litigation which was commenced by the United States in 1968 pursuant to Section 407 of the Civil Rights Act of 1964, 42 U.S.C. 2000c–6. Prior to the trial on the merits, petitioners moved in the district court for leave to intervene as defendants.[1]

[1] On February 6, 1970, Citizens of Indianapolis for Quality Schools, Inc. (CIQS) filed a petition to intervene on behalf of all children of its members and all other students in the Indianapolis public schools. On February 24, 1970, petitioners Laura Wallace, *et al.*, (twenty-two students in the Indianapolis schools) moved to be named as additional parties to the petition for intervention previously filed by the CIQS. Neither motion stated whether intervention was sought under Rule 24 (a) or (b) of the Federal Rules of Civil Procedure.



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On April 29, 1971, the district court denied intervention on the grounds that movants "had no legal interest over and above that of the defendant Board of School Commissioners and, further, that there was no showing that this interest was not being adequately represented by the defendants."[2] Participation as *amicus curiae* was authorized.

Trial on the merits commenced on July 12, 1971, and on August 18, 1971, the district court issued a decision (332 F. Supp. 655) finding that the Indianapolis schools had been unconstitutionally segregated. The defendant school district's appeal from that decision has been briefed and argued and is presently awaiting decision in the court of appeals.

Meanwhile, the district court's order denying intervention was separately appealed by petitioners. On August 14, 1972, the court of appeals entered an opinion (Pet. App. A1–A7) sustaining the denial of intervention but remanding for reconsideration of permissive intervention in light of developments occurring subsequent to the original denial.[3] On September 13, 1972, the district court granted intervention to

[2] Pet. App. A15.

[3] In its decision of August 18, 1971, the district court suggested that certain legal questions regarding the consolidation of the Indianapolis and surrounding school systems should be resolved prior to entry of a long-range desegregation order. Several parties have been added to the case in the district court, and further proceedings are now pending on this question.



the corporate petitioner (App. A, *infra*).[4] No conditions upon intervention were stated. Petitioners have thus substantially achieved the result they wish this Court to direct.

It is unclear what judgment the petition seeks to review. If review is sought of the district court's order of April 29, 1971, denying intervention (see Pet. 1, Pet. App. A14), the short answer is that this Court has no jurisdiction directly to review that order. Indeed, petitioners so recognized, since they appealed that order to the court of appeals, which on August 14, 1972, remanded the case. To the extent that petitioners are challenging the court of appeals' decision insofar as it affirmed the denial of mandatory intervention, that ruling presents no issue warranting review by this Court. Finally, if the individual petitioners are challenging the district court's order of September 13, 1972, granting permissive intervention to the corporate petitioner but denying it to them, the proper method for challenging that order is by appeal to the court of appeals.

[4] Although intervention was granted only to Citizens for Indianapolis for Quality Schools, Inc., the individual plaintiffs here are simply the members of that organization who petitioned individually as well as through their organization.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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WILLIAM C. GRAVES,
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JANUARY 1973.

# APPENDIX A

In the United States District Court for the Southern District of Indiana

Indianapolis Division

(No. IP 68–C–225)

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

THE BOARD OF SCHOOL COMMISSIONERS OF THE CITY OF INDIANAPOLIS, INDIANA, ET AL., DEFENDANTS

*Entry for September 13, 1972*

The Court takes judicial notice of the fact that certain changes have recently taken place with respect to the composition of the defendant The Board of School Commissioners of the City of Indianapolis, Indiana, and that a change has taken place in the office of Superintendent of Schools, and accordingly it is ordered that Karl R. Kalp be substituted for Stanley C. Campbell as a party defendant herein in his official capacity as Superintendent of Schools of the School City of Indianapolis, that Carl J. Meyer, Paul E. Lewis, Lester E. Neal, and Constance R. Valdez be substituted, respectively for Robert D. DeFrantz, Sammy Dotlich, Jerry P. Belknap, and Landrum E. Shields, as members of the defendant The Board of School Commissioners of the City of Indianapolis, and that Kenneth T. Martz be substituted for Robert D. DeFrantz as President of said board.

It is further considered and ordered that, in consideration of the expanded posture of this case the petition to intervene of Citizens of Indianapolis for Quality Schools, Inc., is granted, it being determined that said not-for-profit corporation is representative of the students who are children of its members, as well as of the students specifically named in its petition and all other students similarly situated. Said intervenor is aligned as a party defendant.

It is further ordered that Indianapolis Urban League, Inc., be permitted to file its brief as Amicus Curiae with respect to the issues raised by the petition of the intervening plaintiffs Barbara Gardner, et al.

And now, the parties plaintiff and defendant having announced ready for hearing with regard to the petition of the intervening plaintiffs Barbara Gardner, et al., the intervening plaintiffs offer evidence in chief, and having concluded the presentation of such evidence now rest. Whereupon the defendant The Board of School Commissioners of the City of Indianapolis and the defendant individual members of such board and the Superintendent of Schools commence the introduction of their evidence in chief, and the hour of adjournment having arrived and said defendants not having concluded, the Court adjourned at 6:00 P.M., to reconvene on September 14, 1972, at 1:15 P.M.

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