

C O M P L A I N T

I

The jurisdiction of this Court is invoked under Title 28, United States Code, §1343(3). This is a suit in equity authorized by law, Title 42 United States Code §1983, to be commenced by any citizen of the United States or other person within the jurisdiction thereof to redress the deprivation under color of state statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States and the due process clause of the Fifth Amendment as hereinafter more fully appears.

II

This is a proceeding for a permanent injunction enjoining the Board of Education of Macon County, Alabama, its members, agents, representatives, employees and successors and the Superintendent of Schools of Macon County, Alabama, from continuing their policy, practice, custom and usage of maintaining and operating a compulsory biracial school system in Macon County and of assigning students, teachers and other school personnel to the schools operated and controlled by them on the basis of race.

III

The plaintiffs in this case are Anthony T. Lee and Henry A. Lee, by Detroit Lee and Hattie M. Lee, their parents and next friends; Palmer Sullins, Jr., Alan D. Sullins and Marsha Marie Sullins, by Palmer Sullins and Della D. Sullins, their parents and next friends; Gerald Warren Billes and Heloise Elaine Billes, by I. V. Billes, their father and next

friend; Willie M. Jackson, Jr., by Mabel H. Jackson, his mother and next friend; Willie B. Wyatt, Jr., and Brenda J. Wyatt, by Willie B. Wyatt and Thelma A. Wyatt, their parents and next friends; Nelson N. Boggan, Jr., by Nelson Boggan, Sr., and Mamie Boggan, his parents and next friends; Willie C. Johnson, Jr., Brenda Faye Johnson and Dwight W. Johnson, by Willie C. Johnson and Ruth Johnson, their parents and next friends, and Willie H. Moore and Edwina M. Moore, by L. James Moore and Edna M. Moore, their parents and next friends. Plaintiffs bring this action as a class suit pursuant to Rule 23(a) (3) of the Federal Rules of Civil Procedure on behalf of themselves and on behalf of other Negro children and their parents similarly situated, all of whom are affected by the policy, practice, custom and usage complained of herein as more fully appears. The members of the class on behalf of which plaintiffs sue are so numerous as to make it impracticable to bring them all individually before this Court, but there are common questions of law and fact involved; common grievances arising out of common wrongs and common relief is sought for each of the plaintiffs individually and for each member of the class. Plaintiffs fairly and adequately represent the interests of the class.

IV

Infant and adult plaintiffs are Negro citizens of the United States and of the State of Alabama and are presently residing in the City of Tuskegee, Macon County, Alabama. The minor plaintiffs are either currently attending public schools in Macon County, Alabama, managed, controlled and operated by defendants herein or are eligible to attend such schools. The schools which minor plaintiffs currently attend are all limited by defendants to attendance by Negro children

pursuant to the policy, practice, custom and usage of defendants of operating a compulsory biracial school system and assigning school children therein and other personnel on the grounds of race.

V

Defendants are the Board of Education of Macon County, Alabama, ^{an unincorporated body} ~~public body corporate~~, organized and existing under the laws of the State of Alabama. Wiley D. Ogletree is the Chairman of said Board; ^{MADISCV} ~~Wiley D. Ogletree~~ Davis, John M. Davis, Harry Raymon and F. E. Guthrie are the members thereof. Defendant Board is charged by the laws of ~~the~~ State of Alabama with the duty of operating a system of free public schools in Macon County and said Board is presently operating the public schools in the aforesaid county pursuant to those laws. Defendant C. A. Pruitt, as the Superintendent of Schools for Macon County, is the chief administrative officer of the Board. Defendants are sued in their individual as well as in their official capacity.

VI

Defendants, acting under color of the laws of Alabama, have pursued for some time and are presently pursuing a policy, practice, custom and usage of operating the public school system in Macon County, Alabama on a racially segregated basis. Defendants maintain and operate a compulsory biracial school system by the use of dual school zone or attendance areas for white and Negro pupils. Using the dual attendance areas, defendants make initial assignments of students to the public schools under their control on the grounds of race and color. Principals, teachers and other professional personnel under defendants' jurisdiction are likewise assigned to the schools on the basis of race

and color. Students initially assigned to elementary schools designated as "white" are thereafter assigned solely to high schools similarly designated. Students assigned initially to elementary schools denominated as Negro, are thereafter assigned solely to high schools similarly designated. In no case are the assignments of either students, teachers, principals or other professional personnel of the white race made to schools designated as Negro nor are assignments of students, teachers, principals or other personnel of the Negro race assigned to schools designated as white. Defendants also discriminate against plaintiffs herein and the members of the class represented by them in school construction, the formulation of budgets, and the disbursement of school funds. Specifically, defendants construct elementary and high schools with reference to the maintenance of a compulsory biracial school system. Defendants herein also limit the participation in extra-curricular activities in the schools to one or the other race, separately.

VII

On or about September 12, 1962, adult plaintiff Detroit Lee, on behalf of himself and the other plaintiffs herein, wrote to defendant C. A. Pruitt requesting that the policy, practice, custom and usage of operating a compulsory biracial school system cease, and that defendants refrain from continuing the acts complained of herein. Accompanying this letter was a petition (a copy of which is attached hereto and made a part of this complaint) addressed to defendant Macon County Board of Education signed by plaintiffs herein and other members of the class on whose behalf they sue, requesting that:

- a) Pupils, principals, teachers and other professional

personnel in the schools be assigned without regard to race or color.

b) That defendants refrain from promulgating and enforcing dual zone lines or attendance areas based on race or color.

c) That defendants refrain from assigning Negro elementary school children to Negro high schools and white elementary school children to white high schools.

d) That defendants refrain from sanctioning or supporting extra-curricular activities limited either to white students or Negro students only.

e) That defendants refrain from constructing elementary or high schools or any other schools on the basis of the needs of the races separately.

f) That defendants refrain from continuing to make any other distinctions in the operation of the schools under their jurisdiction based on race or color.

g) Plaintiffs and other members of the class further requested defendant Board of Education to present a plan for the reorganization of the present biracial school system into a unitary, nonracial system.

VIII

On or about September 28, 1962 defendant C. A. Pruitt wrote the plaintiff Detroit Lee acknowledging receipt of his letter of September 12 and the petition presented therewith. The letter stated that the request of the plaintiffs would be presented to defendant Board of Education for consideration. Thereafter, on or about October 10, 1962 plaintiff Lee once again wrote to defendant Pruitt inquiring when the matter contained in his previous letter and the petition would be presented to the defendant Board and further requested that he be informed of the disposition

made of the request. To the date of the filing of this complaint, plaintiffs have received no word from any of the defendants herein.

IX

The plaintiffs herein have not exhausted the administrative remedy provided by the Alabama School Placement Law for the reason that the remedy there provided is inadequate to provide the relief sought by them in this case. By numerous past decisions in this Circuit, plaintiffs are not required to exhaust administrative remedies which will afford them no relief. Plaintiffs have not exhausted the remedies provided by the Alabama School Placement Law for the further reason that the defendants, acting pursuant to the terms of that law, have continued to maintain and operate a compulsory bi-racial school system. The Alabama School Placement Law was passed by the Alabama Legislature in 1955 (Code of Alabama, Title 52, §§61(1) -- 61(12)). Though the Alabama School Placement Law was held to be constitutional on its face in Shuttlesworth v. Birmingham Board of Education, 162 F. Supp. 372, affirmed 358 U. S. 101, the school placement law has been administered and applied to plaintiffs in such a way as to discriminate against them with respect to their constitutional rights under the due process and equal protection clauses of the Fourteenth Amendment and the due process clause of the Fifth Amendment not to be denied admission to the public schools of Macon County, Alabama on the ground of race or color. Though on its face the standards for assignment and transfer of pupils are susceptible of bringing about a unitary, nonracial system, these standards have been applied uniformly in such a way as to deny to these plaintiffs and the members of the class they represent their constitutional rights.

X

Defendant Board of Education has received monetary payments from the government of the United States under its program of assisting school districts which provide free public education for children living with parents employed on property owned or controlled by the Federal Government. Several of the adult plaintiffs are employed by the Veterans Administration Hospital in Tuskegee, Alabama, a federal installation.

For the school year, 1961-1962, the amount received by defendant school board was \$86,338. This amount as well as funds received by defendant in former years has been used to meet a portion of its general operating expenditures. The money so received therefore, has been applied to the maintenance of the policy, practice, custom and usage of operating a compulsory biracial school system in Macon County thereby depriving plaintiffs, and members of the class, of rights secured by the due process clause of the Fifth Amendment to the Constitution of the United States.

XI

Plaintiffs and the members of the class which they represent are irreparably injured by the acts of defendants complained of herein. The continued operation by defendants of a compulsory biracial school system in Macon County, Alabama including the assignment of pupils, teachers, principals and other administrative personnel on the ground of race, the maintenance of dual zone lines or attendance areas based on race; the operation of the budget for the schools on the basis of race; the construction of schools on the basis of race; and the programming and planning of extra-curricular activities on the basis of race violates the rights of the

plaintiffs and the members of their class secured to them by the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States and the due process clause of the Fifth Amendment. This irreparable injury to plaintiffs and their class will continue unless and until defendants are enjoined by this Court from continuing to perpetrate the acts complained of herein. Any other relief to which plaintiffs and those similarly situated might be remitted would be attended by uncertainty and delay, would involve a multiplicity of suits, cause further irreparable injury and occasion damage, vexation and inconvenience and deny to plaintiffs and those similarly situated substantial relief.

WHEREFORE, plaintiffs respectfully pray that the Court advance this cause on the docket and order a speedy hearing of this action according to law and after such hearing:

1. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from continuing to operate a compulsory biracial school system in Macon County, Alabama.

2. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from continuing to maintain a dual scheme or pattern of school zone lines or attendance area lines based on race or color.

3. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from making initial assignments of pupils to the public schools of Macon County, Alabama on the basis of race or color.

4. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from assigning teachers, principals and other professional personnel to the public schools under their jurisdiction on the basis of race or color.

5. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from approving employment contracts, budgets and disbursing funds on the basis of race or color.

6. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from constructing elementary and high schools in Macon County, Alabama on the basis of the dual attendance areas based on race or color.

7. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from programming and supporting extra-curricular activities which are limited solely to one or the other of the races.

8. Enter a decree enjoining defendants, their agents, representatives, employees and successors and all persons in active concert and participation with them from continuing to make any other distinctions in the operation of the schools under their jurisdiction which are based solely on race or color.

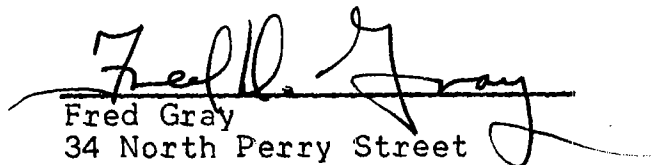
In the alternative, plaintiffs pray that this Court enter a decree directing defendants to present a complete plan in a period of time to be determined by this Court for the re-organization of the entire school system of Macon County, Ala-

bama, into a unitary, nonracial system which shall include a plan for the assignment of pupils, teachers, principals and other professional school personnel on a nonracial basis; the drawing of school zone or attendance area lines on a non-racial basis; the allotment of funds, the construction of schools, the approval of budgets on a nonracial basis; the programming of extra-curricular activities on a nonracial basis and the elimination of any other discrimination in the operation of the school system or curricula which are based solely on race or color.

Plaintiffs pray that if this Court directs defendants to produce a desegregation plan that this Court will retain jurisdiction of this case pending court approval and full and complete implementation of defendants' plan.

Plaintiffs pray that this Court will allow them their costs herein and grant such other, further and additional or alternative relief as may appear to the court from time to time to be equitable, just and proper.

Respectfully submitted,


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Attorneys for Plaintiffs

STATE OF ALABAMA

MACON COUNTY

TO: THE MACON COUNTY BOARD OF EDUCATION:

A PETITION TO THE MACON COUNTY BOARD
OF EDUCATION TO DESEGREGATE PUBLIC SCHOOLS UNDER
YOUR JURISDICTION

We, the undersigned, are residents of Macon County, Alabama and are members of the Negro race; and are parents of school age children, which children attend various schools located in Macon County, Alabama. We hereby petition the Board of Education of Macon County, Alabama to begin immediately operating the schools under your jurisdiction according to the principles laid down by the U. S. Supreme Court on May 17, 1954 in the case of Brown vs. Board of Education; and we particularly request that you do the following:

- (1) Assign pupils to schools under your jurisdiction without regard to their race or color.
- (2) Assign principals, teachers and other professional personnel under your jurisdiction without regard to their race or color.
- (3) Refrain from promulgating and enforcing a dual school system, a particular school zone line and school attending area line on the basis of race and color.
- (4) Refrain from assigning Negro students attending Negro schools of predominant Negro Elementary Schools or predominant Negro High Schools on the basis of race and color.
- (5) Refrain from assigning White students attending White schools of predominant White Elementary Schools or predominant White High Schools on the basis of race and color.
- (6) Refrain from sanctioning or supporting extra-curriculum activities which are limited to only White students or only Negro

(7) Refrain from constructing elementary or high schools and any other schools on the basis of the needs of each of the two races separately.

(8) Refrain from continuing to make any other distinction in the operation of the schools under your jurisdiction which are based solely on race or color.

Petitioners herein further request that the Board of Education of Macon County come forward with a complete plan immediately for reorganizing of the entire dual school system in the City of Tuskegee, and in Macon County into a unitarian nonracial system, which plan should provide for re-assigning of all students on some reasonable nonracial basis, the re-assigning of the teachers, principals and other professional personnel without regard to race or color, construction of schools without regard to race or color, the participation of all students in extra-curriculum activities for which they are eligible without regard to race or color and for the elimination of all other distinctions in the operation of public schools in the City of Tuskegee and in Macon County which are based on race or color.

Arthur R. Rie
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Nelson G. Boggan, Sr.
Nannie F. Boggan
Arthur B. Boggan, Sr.
Thomas L. Boggan
J. V. Bell
James R. Bell
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John A. Bickel

Palmer L. L. L.
Wm. H. L. L.
Willie C. L.
Mrs. Ruth Johnson
Mrs. Mabel Johnson
Mr. Edw. M. Johnson