

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

FILED

FEB 20 1964

R. C. DOBSON, CLERK
By *RS* Deputy Clerk

ANTHONY T. LEE, ET AL,
Plaintiffs,
UNITED STATES OF AMERICA,
Plaintiff and
Amicus Curiae,

Vs.

CIVIL ACTION NO. 604-E

MACON COUNTY BOARD OF EDUCATION,
HARRY D. RAYMON, Chairman,
MADISON DAVIS, JOHN M. DAVIS,
B. O. DUKES and F. E. GUTHRIE
and C. A. PRUITT, Superintendent
of Schools of Macon County,
Alabama; ALABAMA STATE BOARD OF
EDUCATION, GOVERNOR GEORGE C.
WALLACE, President of Alabama
State Board of Education;
AUSTIN R. MEADOWS, Secretary and
Executive Officer of Alabama
State Board of Education; JAMES
D. NETTLES, J. T. ALBRITTON,
J. P. FAULK, JR., FRED L. MERRELL,
W. M. BECK, VICTOR P. POOLE,
W. C. DAVIS, CECIL WORD and
HAROLD C. MARTIN, as members of
Alabama State Board of Education,

Defendants

ANSWER OF DEFENDANT

ALABAMA STATE BOARD OF EDUCATION

Now come the Alabama State Board of Education, Governor George C. Wallace, President of Alabama State Board of Education, Austin R. Meadows, Secretary and Executive Officer of Alabama State Board of Education, James D. Nettles, J. T. Albritton, J. P. Faulk, Jr., Fred L. Merrell, W. M. Beck, Victor P. Poole, W. C. Davis, Cecil Word and Harold C. Martin, as members of Alabama State Board of Education and for answer to the Complaint, the Amended and Supplemental Complaint and the Amendment to the Amended and Supplemental Complaint, show unto the Court as follows:

I.

Not having been parties to the original Complaint, these Defendants are without knowledge of the evidence offered in support

thereof, and as to such demand strict proof.

II.

These Defendants admit that they are the members and constitute the Alabama State Board of Education.

III.

Defendants show that the Alabama State Board of Education exists solely under the laws of the State of Alabama as enacted by the Legislature thereof, that the general control and supervision of the public schools of the "State" was granted to it many years ago, see 1927 School Code, Section 35, and now appears as Section 14 of Title 52, Code of Alabama, as follows:

"Sec. 14. GENERAL POWERS. -The State board of education shall exercise, through the state superintendent of education and his professional assistants, general control and supervision over the public schools of the state, except the University, the Alabama Polytechnic Institute, and the Alabama College, and shall consult with and advise through its executive officer and his professional assistants, county boards of education, city and town boards of education, superintendents of schools, school trustees, attendance officers, principals, teachers, supervisors, and interested citizens, and shall seek in every way to direct and develop public sentiment in support of public education."

These general powers have been exercised in a consultatory and advisory capacity and not administratively and that by legislation enacted pursuant to amendment CXI of the Constitution of Alabama, all matters concerning the subject of assignment, transfer and continuance of pupils in the public schools of each county together with the assignment and transfer of teachers as well as the closing of schools and the payment to the parents and guardians of pupils of funds to provide for the education of children is exclusively delegated to the County Boards of Education under conditions provided in the Legislative Acts of 1955, page 492, et seq., of 1957, page 483 et seq., 1958 page 723 et seq. and 1959 page 1576 et seq. and 1961, Act 210, approved September 15, 1961. By sections now codified as Title 52 of the recompiled Code of Alabama 1958, Sections 61(6), 61(9) and 61(15), the decisions of the County and City Boards of Education are specifically declared to be final and in no event has

administrative authority concerning these subjects been placed by the Legislature in the State Board of Education nor in the officers and members of the Board as such.

IV.

The Defendants note that under the Amended and Supplemental Complaint, the original Plaintiffs seek to broaden this proceeding so that they may represent "other negro children and their parents similarly situated residing in the various counties throughout the State of Alabama." These Defendants show unto the Court that said "other negro children" not resident in the County of Macon, are not alleged to have pursued or exercised the administrative relief established for them under the laws of the State of Alabama before their respective county boards nor has any reason been asserted for their failure to do so. These Defendants show that if there is any policy, practice, custom or usage which denies to these additional Plaintiffs any rights guaranteed to them under the Fifth or Fourteenth Amendments of the Constitution of the United States, such policy, practice, custom or usage has been established by the City and County Boards of Education or by said pupils themselves and not by any act of this Board.

V.

(1) These Defendants on information and belief admit that the Defendant, Macon County Board of Education, assigned thirteen (13) negro pupils to the all-white Tuskegee Public High School on August 30, 1963.

(2) The presence of State Troopers outside the Tuskegee Public High School on September 2, 1963 was in pursuance of their duty to keep peace and order within the State of Alabama. The Defendants are not informed whether said State Troopers claim that the school was closed pursuant to an order of the Defendant, George C. Wallace as Governor of the State of Alabama, but in any event that is not a matter over which these Defendants had any control and supervision.

(3) Similarly, the procedure of this Court in Civil Action 1976-N is not a matter over which these Defendants had any control or supervision.

(4) Similarly, the transfer by the white students who formerly attended the Tuskegee Public School to other schools is not a matter over which these Defendants had any control or supervision.

(5) These Defendants deny that Austin R. Meadows did by letter dated September 19, 1963 direct the Macon County Board of Education to provide school bus transportation to white students who formerly attended Tuskegee Public Schools and shows unto the Court that his letter of September 19, 1963 read as follows:

"

September 19, 1963

Superintendent C. A. Pruitt, and
Members, Macon County Board of Education
Tuskegee, Alabama

Gentlemen:

In accordance with Chapter 4, Title 52, Code of Alabama 1940, as amended, I have reviewed the finance and other matters seriously affecting the educational interest of the children under the jurisdiction of the Macon County Board of Education and I recommend that the just and proper disposition of these matters be as follows:

1. In order to provide educational opportunity to the maximum extent possible, the Macon County Board of Education is to extend the county school bus transportation service to all school children who live two miles or more from the public school they are now attending or may attend.
2. In order to provide the best instruction possible to all children, the teaching assignment of the public school teachers employed by the Macon County Board of Education are to be extended to the extent possible to provide adequate instruction for pupils in the different public schools.
3. The public high schools of the County are accredited and will continue to be accredited by the State Department of Education during 1963-64 as long as instruction is offered to pupils in the courses in which they are enrolled or may be enrolled.

I offer the services of the State Department of Education to assist you in every way possible, at your request, in meeting the education problems in the County.

Respectfully submitted,

A. R. Meadows

State Superintendent of Education *

(6) Whether the matters and things alleged in this sub-paragraph are, or are not facts, these Defendants have no personal knowledge, but in any event they show that they were not matters over which these Defendants had any control or supervision.

(7) Whether the matters and things alleged in this sub-paragraph are, or are not facts, these Defendants have no personal knowledge, but in any event they show that they were not matters over which these Defendants had any control or supervision.

(8) Whether the matters and things alleged in this sub-paragraph are, or are not facts, these Defendants have no personal knowledge, but in any event they show that they were not matters over which these defendants had any control or supervision.

(9) These Defendants admit the passage of the resolution of January 30, 1964 as alleged but show that it was at most an advisory resolution brought about by economic conditions and the natural results thereof.

(10) These Defendants are not informed concerning said statement released by the Macon County Board of Education but allege that, as a matter of law, the said County Board was misinformed, because of the finding of facts and conclusion of this Court rendered in this cause on August 22, 1963, the Opinion of the Justices of the Supreme Court of Alabama heretofore pleaded by these Defendants in their Motion to Alter or Dismiss, and the matters and things pleaded in Paragraph III of this Answer.

VI.

These Defendants admit that by the resolution of January 30, 1964, and February 4, 1964, they did attempt to order the closing of Tuskegee High School, attempt to order that students be transported to Shorter and Notasulga Schools and attempt to order payment of grants-in-aid to students in Macon County, but deny that they have proceeded to exercise any control in any other County in the State of Alabama. These Defendants further show that they misapprehended their powers of closing schools and ordering transportation to be furnished to students, that they have rescinded said resolutions and that they have not pursued, and do not intend to pursue, a policy, and are not authorized by law to operate a public school system of Alabama in any of the counties of the State on a racially segregated basis. They deny all the other allegations of this paragraph.

VII.

These Defendants deny that the Plaintiffs, whether original or those added by amendment, are irreparably injured by any of the acts done by them. They show that as to the Plaintiffs in Macon County, they have withdrawn any instructions concerning the specific matters as hereinabove assigned by the Legislature to the County Board of Education of Macon County and they deny that they have ever, either under law or color of law, operated a compulsory bi-racial school system in any County of the State of Alabama, including any of the details of operation specified in this paragraph or in violation of the rights of any of the Plaintiffs under the due process and equal protection clauses of the Fifth and Fourteenth Amendments of the Constitution of the United States.

These Defendants further show that all of the Plaintiffs have an administrative remedy under the laws and benefits established by the Legislature of the State of Alabama; they

deny all other averments under this paragraph of the Complaint as being merely conclusions of the Pleader and demand strict proof thereof.

VIII.

The Defendants admit the allegations of this paragraph of the Complaint, the same being matters of record.

IX.

These Defendants are not informed of the alleged press statements of Governor Wallace. They admit the adoption of the resolutions of February 4 but show that there was no authority for the same insofar as they effect any right guaranteed to the Plaintiffs under the Fifth and Fourteenth Amendments of the Constitution of the United States. These Defendants deny that they have any purpose, design or that the effect of the above described action of the said Board was to prevent desegregation of the public schools of this State or to circumvent the prior orders of this Court to maintain a racially segregated school system in all counties of the State of Alabama.

X.

These Defendants admit the allegations of paragraph 10 but show that such averments are mere surplusages and do not effect matters before this Court.

XI.

(a) These Defendants deny that the Alabama State Board of Education have the duty and responsibility of maintaining a public school system in the various counties of Alabama and show that said responsibility rests upon the Legislature of Alabama and the County Boards of Education thereof as by law provided. They deny that they have any intention of closing other public schools in Macon County or to pay public funds for the education of pupils in Macon County to attend private schools and allege that specific authority so to do rests upon the Board of Education of said County and they deny that they have intended to deny to the Plaintiffs and the class they purport to represent, due process

of law and the protection of the law as secured by the Fifth and Fourteenth Amendments of the Constitution of the United States. They further deny all other allegations of this paragraph as being conclusions of the pleader and demand strict proof thereof.

Respectfully submitted,


GOODWYN & SMITH


STEINER, CRUM & BAKER


RUSHTON, STAKELY & JOHNSTON


HILL, HILL, WHITING & HARRIS

ATTORNEYS FOR DEFENDANTS

I certify that a copy of the foregoing Answer was mailed to each of the Attorneys of Record for the Plaintiffs, Honorable Richmond M. Flowers, Attorney General of the State of Alabama, and Honorable Ben Hardeman, United States Attorney, by placing a copy thereof in the United States mail, postage prepaid, and properly addressed to them, on this the 19th day of February, 1964.

Alfred O. Quinn