IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

UNITED STATES OF AMERICA, Plaintiff, and CHARLES RIDLEY, et al., Plaintiff-Intervenor, v. STATE OF GEORGIA *et al.,* (DUBLIN CITY SCHOOL DISTRICT & LAURENS COUNTY SCHOOL DISTRICT), Defendants.	)	Civil Action No. 3009

UNITED STATES' REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AGAINST THE LAURENS COUNTY SCHOOL DISTRICT

In a vain attempt to create a genuine dispute of material fact, the Laurens County School District ("Laurens") filed a seventy-one-page response to the United States' Statement of Material Facts Not in Dispute. Virtually all of the pages consist of repetitive and unpersuasive legal arguments. Noticeably absent from this lengthy filing is any admissible evidence disputing the material facts that support entering summary judgment against Laurens. Laurens submits only seven exhibits, and none of them creates a genuine issue regarding the United States' calculations showing substantial violations of the Order of July 16, 1971 ("1971 Order") and the negative effect of transfers from the Dublin City School District ("Dublin") to Laurens on desegregation in Dublin's elementary schools. Nor has Laurens identified any facts to counter the deposition testimony by several Dublin officials establishing that transfers to Laurens

increased the racial identifiability of Dublin's schools and deterred parents from sending their children to Dublin.

Unable to dispute the facts against it, Laurens suggests applying the wrong legal standard. Laurens argues that it may not be enjoined from accepting transfers from Dublin that exceed the 5% limit of the 1971 Order unless the United States proves that Laurens has violated the Constitution. Laurens Resp. to U.S. Summ. J. Mot ("Laurens Resp.") at 2-7, 9-10 (citing Milliken v. Bradley, 418 U.S. 717 (1974)). Milliken's standards do not apply to the injunctive relief sought against Laurens because this relief is not interdistrict in nature. Enjoining Laurens's interference with the 1971 Order is warranted under the All Writs Act, 28 U.S.C. § 1651, Federal Rule of Civil Procedure 65(d), this Court's inherent authority to make a binding judgment, and the numerous cases involving these sources of legal authority. Laurens's efforts to distinguish these cases are wholly unpersuasive. Given Laurens's failures to distinguish the relevant case law and to effectively dispute the facts compelling injunctive relief that halts the violative transfers, this Court should enter summary judgment against Laurens.

I. Laurens's Legal Arguments Do Not Create Genuine Issues of Material Fact

Fact 27 explains how the United States calculated violations of the 1971 Order's 5% limit and the effect of the violative transfers on desegregation in Dublin's schools. U.S. Statement of Material Facts ("U.S. Facts"), No. 27. Laurens objects to Fact 27 "to the extent it purports to dictate to this Court how to evaluate the continued use of the 1971 Order's limit on transfers and the impact of transfers on Dublin City Schools." Laurens Resp. to U.S. Facts ("Counter Facts"), No. 27. This legal argument does not create a factual dispute. Kerr v. McDonald's Corp., 333 F. Supp.2d 1352, 1354 (N.D.Ga. 2004) (holding that "attempt[s] to refute certain . . . facts by

asserting legal arguments, without citations to record evidence, . . . are insufficient to create issues of material fact"); Sanders v. Nunley, 634 F. Supp. 474, 476 (N.D.Ga. 1985) ("Nor do mere denials or allegations by the respondent, in the form of legal conclusions unsupported by specific facts, suffice to create issues of material fact to preclude summary judgment"). Moreover, the calculation methods described in Fact 27 are consistent with the 1971 Order's language[1] and binding case law regarding how to calculate whether transfers have a negative quantitative effect on desegregation. United States v. Lowndes County Bd. of Educ., 878 F.2d 1301, 1305 (11th Cir. 1989) (holding that courts must "compare of the racial composition of the . . . [s]chool as it would exist without the transfers with the [school's] present enrollment including the transfers.").

Laurens does not dispute that the numbers of white transfers from Dublin to Laurens in the school years 1998-99 to 2004-05 have exceeded 5% of Dublin's white resident students. Counter Facts No. 28. By not disputing Fact 28, Laurens has conceded that Dublin violated the 1971 Order in each of these years because this is how the 5% limit should be applied to determine violations. See 1971 Order ¶ 3 (Tab 2);[2] U.S. Facts No. 28. Laurens, however, objects to Fact 28 "to the extent Plaintiff seeks to rely on an admission by Dublin it its Statement of Facts to be used in resolving the Complaint against Laurens." Counter Facts No. 28. This argument is unavailing due to Laurens's own admissions that transfers to Laurens exceeded the

[1] Laurens argues that compliance with the 5% limit is not a prerequisite for moving a Ridley district to the inactive docket, but provides no evidence showing that districts have moved to the inactive docket without demonstrating compliance with this limit. Counter Facts No. 12.

[2] All cites to Tabs 1-68 are to the exhibits supporting the United States' summary judgment motions against Laurens and Dublin, which were filed on February 21, 2006.

1971 Order's 5% limit. Laurens Admis. No. 21 (Tab 13); Laurens Ans. ¶ 24 (Sept. 10, 2004) (admitting violations); Counter Facts No. 28. In addition, the United States does not seek to use Dublin's admissions establishing its violations of the 1971 Order to prove that Laurens violated the 1971 Order.[3] Rather, to halt Dublin's violations, the United States is asking the Court to enjoin Laurens's acceptance of transfers that exceed the 1971 Order's 5% limit. Given that the transfers plainly violate the 5% limit and that Laurens does not dispute its acceptance of these transfers, the undisputed facts provide a sufficient basis for enjoining Laurens's knowing interference with a valid court order.

Unable to challenge the violations of the 1971 Order on factual grounds, Laurens disputes that the 1971 Order's 5% limit is 5% of the number of white Dublin residents attending Dublin, Laurens, and other public school systems. Counter Facts No. 28. Although Laurens agreed that this is how the 5% should be calculated when it answered the Supplemental Complaint and admitted transfer violations by Dublin since 1997, Laurens Ans. ¶ 24,[4] Laurens now argues that the Court should rely on Dr. Rossell's self-serving "guess" at how to calculate the 5% limit, Rossell Dep. at 206:22-207:1 (Tab 70), which conveniently finds a violation in only the 2001-02

[3] In this respect, the instant case is distinguishable from cases prohibiting the use of one codefendant's admission of a violation as the basis for proving the same violation by another codefendant. See, e.g., Riberglass, Inc., 804 F.2d 1577, 1579 (11th Cir. 1986) (prohibiting use of one guarantor defendant's admissions as the basis for entering summary judgment against a codefendant guarantor who answered the admissions "in a timely and legally sufficient manner").

[4] The numbers of transfers violating the 1971 Order listed in the Supplemental Complaint were slightly inaccurate because Dublin's biannual reports counted all non-blacks as whites, but these small discrepancies do not negate the fact that transfers far exceed the 5% limit in each year. Thus, Laurens's dispute to the numbers in Dublin's reports fails to create a genuine dispute over whether violations existed. Counter Facts No. 17 (disputing accuracy of numbers in the reports).

year. See Ex. C at 4-5. Laurens's recent about-face regarding the meaning of the 5% limit highlights why Dr. Rossell's view should be rejected. See also Order of Jan. 24, 1974, at 4-5, 9-10 (Tab 4).

Laurens also challenges the United States' calculations of transfers exceeding the 5% limit on the grounds that they "do[] not take into account transfer [sic] *to* Dublin by white students from other districts." Counter Facts Nos. 31-32, 37-38, 44-45, 51-52, 57-58, 63-64, 69-70, 75-76 (emphasis added). This legal argument ignores the language of the 1971 Order, which looks only at whether white transfers *from* Dublin to school districts with larger white enrollment percentages exceed 5% of Dublin's white resident students. 1971 Order ¶ 3 (Tab 2). This argument is also a meritless basis for disputing the United States' calculations of the "cumulative negative effect" of transfers on Dublin's schools, see Counter Facts Nos. 33-34, 39-40, 46-47, 53-54, 59-60, 65-66, 71-72, because these calculations *do* take into account white transfers to Dublin. These calculations look at the cumulative effect on Dublin's schools of all incoming and outgoing transfers between Dublin and Laurens, U.S. Facts Nos. 33, 39, 46, 53, 59, 65, 71, 77, and between Dublin and all Georgia public school districts. Id. Nos. 34, 40, 54, 60, 66, 72, 78. Although the United States need not take into account incoming transfers to Dublin to prove a violation of the 1971 Order,[5] the United States provided the "cumulative effect" calculations in case the Court applies the Singleton transfer clause to which *inactive* Ridley districts are subject,

[5] This disposes of Laurens's disputes to Facts 52, 58, 64, 70, 76, which correctly show the effect of only the transfers exceeding the 5% limit on the white percentages in Dublin's elementary schools. Laurens's disputes to Facts 81-84 are also unavailing because these facts do not involve any transfer calculations and merely identify decreases in the white percentages in Dublin's elementary schools documented by the GDOE website. See Counter Facts Nos. 81-84; Tabs 6, 19.

see Order of Feb. 14, 1974, at 5 ¶ f (Tab 1), instead of the 5% limit applicable to *active* districts like Dublin.

Laurens further disputes the facts showing the "cumulative negative effect" of transfers between Dublin and Laurens as "incomplete to the extent it fails to take into account incoming white transfers to Laurens and it fails to complete a district wide assessment by excluding data concerning Dublin's middle school and high school." Counter Facts Nos. 33-34, 38-39, 53-54, 59-60, 65-66, 71-72, 77-78.[6] Once again, Laurens submits *no evidence* to create a genuine factual dispute, and its legal argument misunderstands the meaning of "cumulative negative effect." By definition, all of the "cumulative negative effect" calculations "take into account incoming white transfers to Laurens" and require an assessment of the effect at the school level, not the district level. See Lowndes, 878 F.2d at 1305; Lee v. Eufaula City Bd. of Educ., 573 F.2d 229, 233 (5th Cir. 1978). Contrary to Laurens's accusation, the United States did calculate the effect of transfers on the white enrollment percentages in Dublin's middle and high school levels. See Tabs 21, 23-24. The changes in the white percentages of these schools were not included in the United States' Statement of Material Facts because the United States has not alleged, and need not allege, a cumulative negative effect on all of Dublin's schools. See Lowndes, 878 F.2d at 1305-06. Relief against Laurens is more than justified by the negative effect on Dublin's elementary schools.

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[6] Laurens does not dispute Fact 48 but argues that it is "incomplete [t]o the extent [it] seeks to identify a grade level and/or school cluster analysis as the relevant inquiry with respect to the United States' allegations against Laurens." This argument does not create a factual dispute, nor is it credible given that Laurens's expert also used a grade level cluster analysis for school years 1997-98 to 2002-03 because a school level analysis was not possible. See Ex. C at 6-7.

II. Laurens Has Not Effectively Disputed Any of the United States' Calculations

Laurens tries to dispute all of the United States' calculations by arguing that the October FTE data used by the United States is inconsistent with school level October FTE data reported by the Georgia Department of Education ("GDOE"). Counter Facts Nos. 26-27, 29-35, 37-40, 42, 44-47, 49, 51-55, 57-61, 63-67, 69-73, 75-78, 81-84.[7] Laurens makes this argument 48 times but never supports it with a shred of evidence. Id.; see United States v. Gilbert, 920 F.2d 878, 882-83 (11th Cir. 1991) ("The nonmoving party, however, 'must present affirmative evidence in order to defeat a properly supported motion for summary judgment.'") (citation omitted). If indeed the United States' numbers were inaccurate, surely Laurens would have submitted *evidence* from the accessible GDOE website, http://app.doe.k12.ga.us/ows-bin/owa/fte_pack_ethnicsex.entry_form, to prove their inaccuracy. Because Laurens fails to prove that a single calculation by the United States is inconsistent with the school level data on the GDOE website, Laurens cannot create a genuine factual dispute regarding these calculations by simply alleging that they are inaccurate. See Gilbert, 920 F.2d at 883 ("[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment . . . .").

All of the United States' calculations must be accepted as undisputed for four reasons. First, Laurens submits no *evidence* disputing their accuracy as Fed. R. Civ. P. 56 and LR 56.1

[7] To the extent Laurens refers to "someone, who has not been disclosed as an expert in this case," Counter Facts No. 27, the United States notes that its litigation support contractor, Jay Kim, was not disclosed as an expert because the United States is not using him as an expert and did not need an expert to calculate violations of the 5% limit or enrollment changes caused by transfers. The United States disclosed Mr. Kim as the person who conducted the calculations and produced all of his calculations. U.S. Third & Fourth Supp. Disclosures under Fed. R. Civ. Pro. 26.

require. Second, the United States submitted evidence proving that its calculations for Dublin's enrollment by race in each year exactly match the school level October FTE data reported on the GDOE website. Compare Tab 71 with 72; see also U.S. Reply in Supp. of Mot. to Exclude Tabs 30-31. Third, Laurens admitted the accuracy of the United States' calculations based on Laurens's October FTE data, which used the same method as all other October FTE calculations by the United States. See Counter Facts Nos. 36, 43, 50, 56, 62, 68, 74; Laurens Admis. Nos. 6-13 (Tab 13); Rossell Dep. at 159:16-161:8 (admitting accuracy of United States' calculations) (Tab 70). Fourth, Dublin admitted the accuracy of the United States' calculations based on Dublin's October FTE data; thus, these numbers are undisputed, admissible evidence of Dublin's violations regardless of Laurens's unsupported challenges.[8] Dublin Admis. Nos. 1, 4, 6-13, 15 (Tab 12). Given that Laurens's "denials of [these 48] factual contentions are [not] warranted on the evidence," Fed. R. Civ. Pro. 11(a)(4), the United States may move for sanctions if Laurens does not retract these denials.

Laurens also objects to the United States' use of Dublin's admissions regarding the accuracy of the enrollment, resident, and non-resident data for Dublin reported to GDOE. Counter Facts Nos. 22-23. While admitting that a student who has a withdrawal code in Laurens's October FTE data from 1998 to 2005 is not counted as enrolled in Laurens on the date of the October FTE count, Laurens nonetheless disputes this same fact with respect to Dublin's

[8] For all of these reasons, Laurens's efforts to dispute the United States' calculations of the number of Dublin residents by race in Dublin's October FTE data on the grounds that Dublin's admissions cannot be used as a basis for relief against Laurens also fail to create a genuine factual issue. Counter Facts Nos. 35, 42, 49, 61, 67, 73. Laurens's attempts to dispute Facts 135-137 fail for the same reason. Id. Nos. 135-37. Fact 161 is the only figure in the United States' facts requiring correction because Tab 6 shows that white enrollment at NWLE was 741. Id. No. 161.

October FTE data simply due to Dublin's admission thereof. Counter Facts No. 25. Even more remarkable is Laurens's objection to Dublin's admission regarding the accuracy of the GDOE's March FTE data for Dublin, id. No. 23, because Laurens's expert relied on Dublin's March FTE data. Ex. C at 1. In light of Laurens's failure to offer any evidence disputing the accuracy of Dublin's October or March FTE data to GDOE, each of these admissions by Dublin constitutes undisputed, admissible evidence establishing Dublin's violations of the 1971 Order, and this Court is in no way precluded from considering the requested injunctive relief against Laurens to halt these violations.

III. Laurens Has Not Effectively Disputed the Negative Effect that Transfers to Laurens Have Had on Desegregation in Dublin's Elementary Schools

Laurens "explicitly denies that transfers increased the racial identifiability of Dublin's elementary schools and the perception of Dublin's elementary schools as black schools," Counter Facts No. 87, but once again fails to identify any evidence supporting its denial. Laurens cannot dispute the plethora of facts demonstrating that transfers to Laurens decreased the white percentages of Dublin's elementary schools and aggravated community perceptions of these schools as black schools, see U.S. Facts Nos. 33-108, because Laurens's own expert views these schools as black schools and conceded that transfers negatively affected Dublin's elementary schools by causing a loss of 420 white students between 1997-98 and 2004-05. Counter Facts Nos. 109-11 (admitting these facts). Unable to dispute the testimony of its own expert, Laurens instead "disputes Plaintiff's suggestion that this court should only look at the impact of transfers on Dublin's elementary schools and that incoming transfers should be ignored." Id. No. 110. This *legal* argument is incorrect, see Lowndes, 878 F.2d at 1305, and does not create a genuine

factual dispute. See Kerr, 333 F. Supp.2d at 1354; Sanders, 634 F. Supp. at 476.

Laurens disputes "the veracity" and "accuracy" of many facts established by the deposition testimony of Dublin's current and former officials. Counter Facts Nos. 79, 95, 89, 90-94, 96-99, 101, 103-107, 118-121, 142, 151. These assertions are meaningless due to Laurens's failure to identify *any* facts contradicting this testimony. See Cohen v. United Am. Bank of Cent. Fla., 83 F.3d 1347, 1349 (11th Cir. 1996) ("There is no genuine issue for trial unless the non-moving party establishes, through the record presented to the court, that it is able to prove evidence sufficient for a jury to return a verdict in its favor."). Laurens's "conclusory allegations" disputing the accuracy of these facts do not create a genuine factual issue. Avirgan v. Hull, 932 F.2d 1572, 1577 (11th Cir. 1991) ("The evidence presented [to oppose summary judgment motion] cannot consist of conclusory allegations or legal conclusions."); Peppers v. Coates, 887 F.2d 1493, 1498 (11th Cir. 1989) (holding that if response to summary judgment motion consists only of "conclusory allegations, the district court must enter summary judgment in the moving party's favor"). In the absence of contradictory *evidence*, all of the facts established by this deposition testimony must be treated as undisputed. See Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

Laurens's challenges to the "admissibility" of the deposition testimony by Dublin's current and former officials also fail because Laurens has not identified *any basis* for objecting under the Federal Rules of Evidence.[9] Merely declaring a fact inadmissible does not make it so.

[9] See Counter Facts No. 79 (board member Ms. Scott and former superintendent Dr. Schuber); Nos. 85, 89, 96-99, 106-07, 142 (Dr. Schuber); Nos. 90, 134 (former superintendent Dr. Quinn); Nos. 91-92, 121, 151 (board member Mr. Willis); Nos. 93-94, 103 (principal Ms. Smith); No. 104 (principal Dr. Hooks); No. 101 (Ms. Smith, Drs. Quinn, Schuber & Hooks); No. 118 (Dr. Hooks and Ms. Scott); Nos. 119-20 (Ms. Scott); No. 105 (Dr. Schuber, Ms. Scott,

The facts established by the testimony of Mr. Willis and Ms. Scott, who were current board members when they testified, and Ms. Smith and Dr. Hooks, who were current principals when they testified, are admissible admissions by a party-opponent under Fed. R. Evid. 801(d)(2)(A). The facts established by Dr. Schuber's testimony are admissible under Fed. R. Evid. 801(d)(2)(D) because he testified about statements and actions he took during his employment as superintendent. See Fed. R. Evid. 801(d)(2)(D); Horne v. Turner Const. Co., 136 Fed. Appx. 289, 292 (11th Cir. 2005) (holding that statements of former "superintendents . . . made within the scope of their authority" were admissible under Fed. R. Evid. 801(d)(2)(D)); City of Tuscaloosa v. Harcros Chemicals, Inc., 158 F.3d 548, 557-58 (11th Cir. 1998) (holding that manager's report of his past statement to a member of the city's board was admissible under Fed. R. Evid. 801(d)(2)(D)).

Laurens tries to dispute several facts established by the admissible testimony of Dublin officials by arguing that these facts are not "material to Plaintiff's claims against Laurens." Counter Facts Nos. 88-89, 91, 95-97, 100-108.[10] Facts are "material" when they "might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The facts challenged on materiality grounds show that the white transfers from

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Dublin Admis. No. 24). The United States regrets to inform the Court that Ms. Scott passed away in March 2006.

[10] Laurens also disputes Fact 34 as not "material to Plaintiffs' Complaint against Laurens." Counter Facts No. 34. This fact shows the cumulative negative effect of transfers between Dublin and all Georgia public school districts in the 2005-06 school year. Id. The United States offered this fact in addition to those showing the negative effect of transfers between Dublin and Laurens to show the Court that incoming transfers to Dublin from other districts do not offset the negative effect on desegregation in Dublin's schools caused by the transfers involving Laurens.

Dublin to Laurens aggravated the community's perception of Dublin's schools as "black" schools and deterred white parents from sending their children to Dublin's schools. U.S. Facts Nos. 88-89, 91, 95-97, 100-08. These facts are undeniably material to the United States' claim that Laurens should be enjoined from accepting transfers in excess of the 1971 Order's 5% limit because these facts establish the negative qualitative effect that transfers to Laurens have had on desegregation in Dublin's elementary schools. See Lowndes, 878 F.2d at 1306 (explaining that the qualitative inquiry examines whether transfers "aggravate[d] or alter[ed] popular perceptions of [the school's] racial identity [as a black school] and . . . affect[ed] the decisionmaking process of white students considering where to attend school").

IV. Milliken's Standards Do Not Apply Because Interdistrict Relief Is Not Sought Here

The United States has already explained why Milliken's standards do not apply to the injunctive relief sought against Laurens in the United States' Opposition to Laurens's motion for summary judgment. U.S. Opp. to Laurens Summ. J. Mot. at 2-10. This explanation is incorporated by reference. Below the United States responds only to the new arguments regarding Milliken and Lee v. Lee County Board of Education, 639 F.2d 1243 (5th Cir. 1981), that Laurens has raised in its response to the United States' summary judgment motion.

Laurens accuses the United States of trying to "impose obligations on Laurens to promote desegregation in Dublin." Laurens Resp. at 4. If the United States wished to have Laurens *promote* desegregation in Dublin, the United States would have sought relief requiring white student transfers from Laurens to Dublin or consolidation of the Laurens and Dublin districts. All the United States asks is that Laurens stop *interfering* with desegregation in Dublin by no longer accepting students who should be attending Dublin's schools in the first place based on

their residency and whose transfers exceed the 1971 Order's 5% limit. Ordering Laurens to continue using a slightly modified version of its residency verification procedures does not require Laurens to promote desegregation in Dublin either. Rather, this relief is needed to ensure that Laurens's interference with the Order actually stops, because without such relief, Laurens would continue to accept violative transfers by enrolling Dublin residents who falsely claim residence in Laurens.

Because the requested relief does not constitute "a cross-district remedy," the United States need not prove that racially discriminatory acts in Laurens caused racial segregation in Dublin or that the district lines between Dublin and Laurens were drawn on the basis of race. See Laurens Resp. at 7 (citing Milliken, 418 U.S. at 744-45). The remedy sought against Laurens is distinguishable from the "cross-district remedy" sought in Lee despite Laurens's efforts to equate them. Laurens Resp. at 4-6. Laurens characterizes the relief sought against Opelika and Auburn in Lee as merely "alter[ing] their transfer policies," id. at 4 n.2, and contends that Lee "identif[ied] Milliken as [the] controlling authority under which a request . . . to suspend interdistrict transfers must be analyzed." Id. at 6. Both assertions are untrue. The relief did not involve enjoining transfers because Opelika and Auburn had stopped accepting them. Lee, 639 F.2d at 1261-62. Milliken applied only because the relief would have required Opelika and Auburn to "participate" in the plan to desegregate the Loachapoka school by transferring their students to the school. Id.

Given that Milliken and Lee do not apply to the relief sought against Laurens, it matters not that an increase of 5.24% from 91.20% black to 96.44% black at the Loachapoka school in Lee fell short of the "significant interdistrict segregative effect" required under Milliken.

Laurens Resp. at 10. Even if the decreases in the white enrollment percentages at Dublin's elementary schools caused by transfers in the 2003-04, 2004-05, and 2005-06 school years do not rise to the level of a Milliken violation, these quantitative effects coupled with the undisputed testimony regarding the qualitative effect of the transfers amply show that transfers to Laurens have negatively affected desegregation in Dublin. See U.S. Facts Nos. 33-108. There is no question that transfers to Laurens have violated the 1971 Order, increased the racial identifiability of Dublin's elementary schools as "black" schools, and deterred parents from sending their kids to Dublin. Id. Even Dr. Rossell's analysis and testimony establish violations and a negative effect on Dublin's elementary schools. Id. Nos. 109-12.[11] The violations "support[] injunctive relief forcing an end to such transfers and compliance with the terms of the desegregation order," Lee, 639 F.2d at 1261, and this relief must enjoin Laurens's acceptance of violative transfers to ensure their end.

Laurens tries to dispute this inevitable conclusion by relying on Dr. Rossell's district-level "net gains" to Dublin, Laurens Resp. at 8-9, her unsupported assertion that courts are interested in the impact of transfers at the district level, Ex. D at 184-85, and Laurens's belief that the 1971 Order requires considering the impact of transfers on desegregation at the district level. Id. at 9-10 n.6. Dr. Rossell's net gains are unreliable and contradicted by the United

[11] Her calculations of the 5% limit show violations in each year. Ex. 580 (Tab 68). Her figures show negative effects on Dublin's elementary schools in the 2003-04 and 2004-05 school years. Ex. 597 (showing a -6 percentage point change at Saxon Heights in FY05) (Tab 63); Ex. 590 (showing a -6 percentage point change at Susie Dasher and Saxon Heights in FY04) (Tab 64). Her grade cluster figures show much larger negative effects on the elementary schools than the 5.24% effect in Lee. See, e.g., Ex. 588 (showing a -13 percentage point change at Saxon Heights in FY03) (Tab 65); Ex. 596 (showing -14 percentage point change at Saxon Heights in FY02) (Tab 66); Ex. 592 (showing a -11 percentage point change at Saxon Heights in FY01) (Tab 67).

States' calculations.[12] While absence of Singleton's "cumulative effect" language in the 1971 Order, Laurens Resp. at 10 n.6, explains why the United States need not show a cumulative negative effect on desegregation to prove a violation of the 1971 Order, this absence does not alter the fact that "[t]he effect of desegregation must be measured on a school-by-school basis." Eufaula, 573 F.2d at 233. A school-level analysis is required because "[t]his is the only operational level on which actual segregative effect can be measured, and upon which it can be determined whether the transfer policy reduces desegregation or reinforces the existence of a constitutionally impermissible dual school system," id., not because Lowndes was concerned with "transfers into one particular school." Laurens Resp. at 10 n.6. Dr. Rossell's preference for a district-level analysis cannot override this binding case law.

V. Laurens's Knowing Interference with the 1971 Order Warrants Injunctive Relief Even if this Court Considers Only the 2003-04, 2004-05, and 2005-06 Transfer Violations

Laurens admits that in August 2003 the United States notified Laurens of the 1971 Order and informed Laurens that its acceptance of transfers from Dublin were violating the 1971 Order and impeding desegregation in Dublin. Counter Facts No. 124. Laurens nonetheless "denies that it is in any way impeding desegregation in Dublin and that it is subject to the 1971 Order." Id. Unable to identify a single fact to support its denial, Laurens argues that it is not subject to the 1971 Order. Id. The United States does not contend that 1971 Order applies to Laurens, but it is

[12] See U.S. Mem. & Reply in Supp. of Mot. to Exclude (discussing her eight errors). Her net gain of 72 white students in grades K-12, Laurens Resp. at 9, and her net loss of 420 white K-5 students, Ex. 580 (Tab 68), are contradicted by the United States' calculations of a net loss of 253 white students in grades K-12 and a net loss of 528 white students in grades K-5 from 1998-99 to 2005-06. Compare number of white transfers from 687 (Laurens) for grades K-5 and K-12 in Tab 17 with number of white transfers to 687 (Laurens) for grades K-5 and K-12 in Tab 15. Id.

beyond question that Laurens's acceptance of the transfers *causes* violations of the 1971 Order and constitutes knowing interference with a valid court order. U.S. Facts Nos. 124-34.

Laurens tries to dispute the facts establishing its knowing interference with the Order by arguing that this Court may not consider pre-2003-04 data against Laurens since it did not receive notice of the Order until August 2003. Counter Facts Nos. 27, 136-37. Even if this Court accepted Laurens's argument, the pre-2003-04 data extending back to 1997 are clearly relevant to whether Dublin violated the 1971 Order and indisputably show violations by Dublin and the negative effect that transfers have had on Dublin's elementary schools since 1997. U.S. Facts Nos. 33-108. Laurens's continued acceptance of the violative transfers in the 2003-04, 2004-05, and 2005-06 school years and their continuing negative effect on desegregation establish Laurens's knowing interference with the 1971 Order and therefore support entering summary judgment against Laurens. In addition, if the Court considers the pre-2003-04 data irrelevant to the claims against Laurens, then all of Dr. Rossell's pre-2003-04 assertions are irrelevant and inadmissible.

Laurens also attempts to use its $300 tuition policy and 2005-06 residency verification procedures to deny its knowing interference with the 1971 Order. Laurens Resp. at 16-17; Counter Facts No. 127. Neither the tuition policies nor the residency verification procedures have halted Laurens's interference with the 1971 Order. Laurens continues to accept large numbers of transfers in excess of the 5% limit, to request records for these students from Dublin, and to transport some of these students to Laurens's schools. U.S. Facts Nos. 28, 30, 36, 43, 50, 128, 164-65. By reducing its tuition from $999 per child to $300 per family after it received notice of the 1971 Order in August 2003, Laurens actually increased the number of violative

transfers from Dublin to Laurens. See Tab 15 (showing 149 white transfers in 2002-03 and 189 in 2005-06). Furthermore, Laurens's continued acceptance of white Dublin residents whose transfers exceeded the 5% limit was all the more knowing and willful this school year because Laurens verified that these students were not Laurens residents and accepted them nonetheless.

Laurens challenges the United States' reliance on Federal Rule of Civil Procedure 65(d) on the grounds that "active concert" requires "joint action toward a joint goal" and "more than mere adherence to Georgia law and a standing policy." Laurens Resp. at 18 (citing Lance v. Plummer, 353 F.2d 585 (5th Cir. 1965)). Lance does not require joint action toward a joint goal. Id. Morever, the Fifth Circuit in Lance rejected the very argument that Laurens has made, i.e., that an individual cannot be enjoined from interfering with an order if the individual was not a party subject to the order. Id. at 591. The Fifth Circuit upheld the injunction because the individual had actual notice of the order and engaged in conduct that both contravened the order's terms and contributed to a named defendant's violation of the order. Id. This reasoning supports enjoining Laurens given its knowledge of the 1971 Order, its continued acceptance of the violative transfers, its continued requests for student records from Dublin, and its transportation of certain transfer students. See Counter Facts Nos. 28, 30, 36, 43, 50, 124, 128, 164-65.

Officials from Dublin and Laurens confirmed that the districts work together to facilitate the violative transfers by regularly exchanging the students' records. U.S. Facts Nos. 117-18, 128-34. Georgia law does not require Laurens to accept transfers from Dublin, GA Rule 160-5-1-.14(2)(a), and Dublin's duty not to permit the transfers under the 1971 Order superceded any duty under state law to transfer records to Laurens. See id.; U.S. Const. art. VI, cl. 2; Rapides,

646 F.2d at 944. To ensure that Laurens does not accept violative transfer students or request their records from Dublin, Laurens must verify that all new students, former Dublin transfers students, and former residents of Dublin who claim to be residents of Laurens are indeed Laurens residents. This relief is needed due to the facts showing that Dublin residents have falsely claimed residence in Laurens. See Counter Facts Nos. 135-42, 149, 151-53 (admitting these facts or disputing them without citing any contrary evidence).[13] Clearly Laurens's knowing interference with the 1971 Order and the negative effect that this interference has caused on desegregation in Dublin will continue until Laurens either agrees or is ordered to deny transfers in excess of the 5% limit and to continue its residency verification procedures in the manner requested by the United States.

VI. The Cases Cited by the United States Support Injunctive Relief Against Laurens

Laurens challenges the numerous cases supporting this Court's authority to enjoin Laurens's interference with the 1971 Order under the All Writs Act, Rule 65(d), and its inherent power to make a binding judgment arguing that none of these cases involved a request for injunctive relief against a school district that was not subject to the desegregation order. Laurens Resp. at 12. This is untrue. United States v. State of Texas (Hearne), 2005 WL 1868844 (E.D.Tex. 2005) involved this exact scenario, and most of the other cases involved non-parties to a desegregation order. See Cooper v. Aaron, 358 U.S. 1, 17-18 (1958) (holding that governor and state legislature had duty to obey federal desegregation order against school district); Valley

[13] Laurens challenges the accuracy and admissibility of the United States' evidence showing 28 white "residents" of Laurens whose addresses could not be verified. Counter Facts No. 153. Laurens offers no valid objection to this evidence, nor any counter evidence verifying their addresses even though Laurens plainly could have obtained such evidence if it existed. Id.

v. Rapides Parish Sch. Bd., 646 F.2d 925, 943 (5th Cir. 1981) (enjoining non-party interference with desegregation order); United States v. Hall, 472 F.2d 261, 267 (11th Cir. 1972) (holding that "willful violation of [a desegregation] order by [a non-party] having notice of it constitutes criminal contempt"); Bullock v. United States, 265 F.2d 683, 691 (6th Cir. 1959) (upholding criminal contempt against defendant and non-parties for disobeying desegregation order); United States v. State of Texas, 356 F. Supp. 469, 471 (E.D. Tex. 1972), aff'd, 495 F.2d 1250 (5th Cir. 1974) (enjoining state court's interference with transfer clause of a desegregation order).

Laurens attempts to distinguish Hearne on several unpersuasive grounds. See Laurens Resp. at 13-16, 18-19. First, the court in Hearne neither applied Milliken nor found an interdistrict violation under Milliken, and the court's decision to apply the All Writs Act, Rule 65(d), and the court's inherent authority to make a binding judgment was fully informed because the parties had briefed Milliken. See, e.g., TEA Resp. to U.S. Mot. to Enforce (5/19/04), 2004 WL 3359391; U.S. Reply to TEA Resp. (6/23/04), 2004 WL 3359405; contra Laurens Resp. at 15. Second, it is irrelevant that Mumford's enrollment consisted of a larger percentage of transfer students than Laurens's enrollment because the relevant figures were the percentage point decreases in white enrollment caused by the transfers. See Hearne, 2005 WL 1868844, at *22; contra Laurens Resp. at 14. These percentage point decreases were strikingly similar to those experienced by Dublin's elementary schools. Compare Hearne, 2005 WL 1868844, at *22 & Table F, *25 & Table J with Tabs 21, 23, 24. Hearne therefore supports finding that transfers to Laurens have negatively affected Dublin's elementary schools. Third, the relief in Hearne did not depend on the fact that half of white Hearne residents attended schools out of district, contra Laurens Resp. at 14, but it is worth noting that 30.5% of Dublin's white residents attend schools

out of district. Tab 20.

Although Mumford ran five buses into Hearne to transport Hearne residents, solicited transfers from Hearne, and misrepresented certain transfers to the Texas Education Agency ("TEA") to secure funding from TEA, these specific facts are not prerequisites for applying the All Writs Act or Rule 65(d). See Hearne, 2005 WL 1868844, at *40-*41; contra Laurens Resp. at 14. Moreover, Laurens admits having run buses into Dublin and to transporting Dublin residents to school this year. Counter Facts Nos. 164-65. Laurens also admits requesting records from Dublin for students whose transfers exceed the 5% limit. Id. No. 128. If anything, Mumford's submission of false data to TEA undermined the degree to which they were "in active concert" under Rule 65(d). See Hearne, 2005 WL 1868844, at *40 ("Inasmuch as Mumford consistently failed to report or misrepresented its transfers since before 1998, TEA could never have given it the notice required by paragraph A(5) of the Order.").

Lastly, Laurens tries to distinguish Hearne by arguing that Mumford and TEA admitted joint action while Laurens and Dublin have not. See Laurens Resp. at 18-19. Although TEA admitted working with Mumford to establish Mumford's baseline transfers and funding violative transfers to Mumford, Mumford and TEA contested relief under Rule 65(d). Hearne, 2005 WL 1868844, at *40. The degree of similarity between their admissions and those of Dublin and Laurens provides strong support for granting the requested injunctive relief against Laurens. See U.S. Facts Nos. 28, 113-123; Dublin Admis. Nos. 4, 6-12, 14, 17-19 (Tab 12); Counter Facts Nos. 28, 127-34; Laurens Admis. No. 21 (Tab 13); Laurens Ans. ¶ 24.

VI. The Relief Sought in the United States' Summary Judgment Motion is Less Extensive than that Sought in its Motion for Further Relief and Complaint Against Laurens

When the United States moved for further relief and filed its complaint against Laurens in 2004, the United States asked the Court to enjoin Laurens from accepting white transfers from Dublin in grades K-8, to enforce the 1971 Order's 5% limit with respect to grades 9-12 only, and to conduct residency verification subject to the terms of a proposed order. U.S. Mot. for Further Relief & Proposed Order (Ex. A); Supp. Compl. During discovery, the United States learned that transfers violating the 5% limit continue to have a negative effect on Dublin's elementary schools but no longer have this effect on Dublin's middle school. The United States also learned that Laurens began using residency verification procedures this year that address much of the relief sought in the proposed order. Compare Ex. A with Ex. D. As a result, the United States' motion for summary judgment seeks only injunctive relief that enforces the 5% limit of the Order by prohibiting Laurens from accepting more than 5% of the white resident students in Dublin's grades K-5 and no more than 5% of Dublin's total white resident students. With respect to verifying residences, the United States asks only that Laurens: continue its current policy with respect to three groups of students and post on its website the complaint procedure required by this policy, see Counter Facts No. 150; obtain a guardianship order or affidavit to prevent sham residences with purported legal guardians, foster care parents, and non-parents; and withdraw students who do not provide proof of residence within ten days of receiving notice that the proof is overdue.

If this Court finds that the transfers to Laurens violate the 1971 Order's 5% limit, or the Singleton transfer clause applicable to inactive Ridley districts, Order of Feb. 14, 1974, at 5 ¶ f (Tab 1), this Court should order Defendant State of Georgia to withhold FTE funds from Laurens

for any violative transfer student from Dublin. This relief is acceptable to the State, consistent with its obligations under the Ridley orders, and needed to ensure compliance with the 1971 Order because Laurens will not accept the violative transfers if GDOE will not fund them. See U.S. Mem. in Supp. of Mot. for Summ. J. at 20-22. If, as Laurens suggests, this Court merely orders Dublin not to provide copies of student records to parents until the parent provides a request from the receiving district and Dublin confirms that the transfer would not violate the 1971 Order, Laurens Resp. at 20-21, this will not prohibit transfers in violation of the 1971 Order because Dublin residents can easily flout the 5% limit by falsely claiming residence in Laurens. Without an order requiring Laurens to verify residences of new students as well as former Dublin transfers and residents and an injunction prohibiting Laurens from accepting violative transfers, violations of the 1971 Order and the negative effect that they have on desegregation in Dublin will continue.

Conclusion

For the foregoing reasons, this Court should enter summary judgment and issue the requested injunctive relief against Laurens.

Respectfully submitted,

LISA GODBEY WOOD
United States Attorney
Southern District of Georgia

Delora L. Kennebrew
Assistant United States Attorney
Chief, Civil Division
Southern District of Georgia
Georgia Bar No. 414320

WAN J. KIM
Assistant Attorney General

_____
FRANZ R. MARSHALL
EMILY H. McCARTHY
(District of Columbia Bar No. 463447)
Attorneys for Plaintiff United States
U.S. Department of Justice
Civil Rights Division

Educational Opportunities Section - PHB
950 Pennsylvania Ave., N.W.
Washington, DC 20530
Ph: (202) 514-4092
Fax: (202) 514-8337

DATED: April ___, 2006

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing United States' Reply in Support of its Motion for Summary Judgment Against the Laurens County School District was served on April _, 2006, via Federal Express upon counsel for the Dublin City School District and the first counsel listed for the Defendant Laurens County School District, and by first-class mail, postage prepaid, upon the remaining counsel for the Laurens County School District and the State Defendants:

Jerry A. Lumley, Esq.
Lumley & Howell, LLP
350 Second Street
Macon, GA 31201
Attorney for Defendant Dublin City School District

Janet Higley, Esq.
Parks, Chesin & Walbert, P.C.
521 East Morehead Street, Suite 120
Charlotte, North Carolina 28202
Attorney for Laurens County School District

A. Lee Parks, Esq.
Parks, Chesin & Walbert, P.C.
75 Fourteenth Street, Suite 2600
Atlanta, Georgia 30309
Attorney for Laurens County School District

Donald W. Gillis, Esq.
Nelson, Gillis & Thomas, LLC
125 N. Franklin Street
Dublin, GA 31021-6701
Attorney for Laurens County School District

Alfred L. Evans, Esq.
State Judicial Building, Suite 232
40 Capitol Square, S.W.
Atlanta, Ga. 30334-1300
Attorney for State Defendants

_____
EMILY H. MCCARTHY
Attorney for Plaintiff United States